

VIA EMAIL AND PRIORITY MAIL WITH ONLINE TRACKING

July 28, 2015

To: NYS DEC Acting Commissioner Marc Gerstman
NYS DEC Assistant Commissioner, Natural Resources Kathy Moser
NYS DEC Assistant Commissioner, Water & Watershed James Tierney
Army Corps of Engineers Buffalo Commander LTC Karl D. Jansen
Army Corps of Engineers Buffalo Deputy Commander LTC Michael A. Busby
EPA Region 2 Director Judith Enck
Governor Andrew Cuomo
Rep. John Katko and Senator Charles Schumer

From: Dr. V. M. Fichera (PhD) [and for Residents of Sanford Road, et al.]
Adjunct Professor, Binghamton University-SUNY

Re: Proposed Martville and Hannibal sand and gravel operations: lack of NYSDEC and USACE oversight in SEQR and Lead Agency reviews, and wetland/water regulations enforcement

DEC Region 7 might grant a mining permit to the Martville mine within a matter of days. Resident letters and petitions are herewith attached to request an extension of SEQR review and ultimate denial of the permit as **"empowerment of individuals to participate in environmental decisions that affect their lives"** (cf. DEC's Mission at <http://www.dec.ny.gov/24.html>). Additional attached emails to the DEC Region 7 Director, and to the US Army Corps of Engineers, detailed multiple concerns with the **lack of due diligence and oversight** in the matter of the proposed **Sanford Road Martville and Hannibal Harris Hill Road gravel mines** – failures of oversight which appear to have already jeopardized and/or will jeopardize: adjoining **national wetlands**, endangered species, the **protected waters of the Lake Ontario tributary Sterling Creek**, adjacent principal aquifer, and multiple residential wells and springs.

Additional deleterious **impacts**, on the **health and safety** of the residents of the areas of proposed mines, on **traffic safety and congestion**, on the **community character** of the town and on **Native American artifacts, etc.** have been disregarded in DEC dual SEQR and Lead Agency mining permit reviews. Alone among the DEC Regions, the DEC 7 Mining Division does not report to DEC Natural Resources Division. It is also noteworthy that the **Cayuga County GML-239 Committee has voted against the Permit application** for some of the same reasons above (cf. attached minutes).

The DEC Region 7 Director has not responded to this resident concerning her communications; the Army Corps of Engineers of the Buffalo Office Auburn Field Station has likewise ignored multiple emails. Therefore, the above addressees are requested to exercise their joint and/or several oversight jurisdictions to investigate these matters so that **a sensitive environmental area, together with neighboring residents' health, safety and the general welfare** may be defended and protected.

The DEC Region 7 has, inter alia:

- Engaged in serious misrepresentations of the facts and circumstances of the environmental, historical, and community factors it is charged with investigating as Lead Agency in the SEQR process (cf. attached Comments/Correspondence incl. Sanford Road and Town residents)
- Aided and abetted permit applicants in their submission and DEC approval of what appear to be fraudulent EAFs, etc., also allowing major deviations from standard procedures (cf. enclosures)
- Failed to consult timely with involved agencies and divisions (e.g. OPRHP, NYS DOT, DEC Natural Resources staff, et al.), and in some cases, has not formally consulted at all (cf. enclosures)

- Failed to pursue important recommendations from the NYS DOT concerning major accident, traffic gap, and infrastructure studies needed for hazardous traffic intersections to be used by heavy industrial vehicles of the proposed operation, including eighteen-wheeler trucks
- Altered the reporting structure for the Mining Division within the DEC region to obviate the supervision of the Natural Resources Division, which appears to have facilitated a lack of due diligence in evaluating environmental impacts in SEQR reviews and enforcement
- Issued Completed Applications and Negative Declarations without the above consultations as Lead Agency necessary to the SEQR process, serving as a mouthpiece for the mining industry
- Failed to enforce its own wetland jurisdiction, issuing the Hannibal mine a Negative Declaration without requiring a wetland permit for a registered wetland on the property of the operation
- Reportedly engaged in multiple communications with one or more permit applicants, denigrating the public comment process as a waste of time and assuring applicants of the ultimate granting of a permit with no further studies (cf. discussion in enclosures)
- Approved such environmentally questionable practices as explicit steep slope reduction and mining over a national wetland, and the burial of covered fill on such slopes (cf. MLUP)
- Failed to test water quality of the Lake Ontario tributary as a baseline for later enforcement
- Failed to require the applicant to formally delineate the national wetland adjoining the LOM property, highlighted on DEC and Town maps as a "sensitive environmental area" (cf. attached)
- Failed to require comparative borings and well water testing to determine the potential for the lowering of the water table by removal of vast overburden, and the deleterious effects possible on neighboring rural wells (cf. attached review by Dr. Richard Young, geologist/hydrologist).

The Army Corps of Engineers Buffalo Office has, inter alia:

- Failed to investigate complaints of fill in a national wetland and the Sterling Creek, a protected tributary of Lake Ontario (USACE simply walked the Life-of-Mine perimeter and not the wetland)
- Failed to sustain a request that a mining permit applicant engage a study to formally delineate the wetland indicated on the NFWS finder map as well as the DEC maps, allegedly giving a permit applicant verbal assurances despite the lack of such formal delineation studies or even an on-the-ground inspection of the wetland area itself (cf. enclosures)
- Failed to respond to correspondence, with no acknowledgement of receipt to date
- Not yet acknowledged receipt of an emailed FOIA request of July 5, 2015, even though many Federal agencies issue automatic response emails confirming receipt immediately
- Failed to coordinate with the regional National Fish and Wildlife Service which agency now has the impression that the USACE Buffalo has determined not to investigate the wetland and thereby blocking any further FWS involvement or coordination, all in the absence of any referenced formal wetland delineation which would supersede NFWS maps and the DEC maps

Therefore, the above state and Federal officials are formally requested to investigate these matters and to ensure the full enforcement of all applicable state and Federal statutes and regulations for the protection of the environment as well as the health, safety and general welfare of the public. The special interests of the mining industry in the permitting process are not above the rule of law. Finally, this resident has riparian rights on the Sterling Creek downstream from the proposed quarry and, along with the residents of rural/residential Sanford Road, Martville and Victory (many have serious disabilities, including COPD, asthma, PTSD, emphysema, etc.), would be harmed by the proposed mine's impacts.

Enc. (5): A) Maps; B) County GML 239 Minutes; C) Correspondence to DEC /Sterling; D) Correspondence to DEC 7 Director/USACE; E) Independent Expert Geologist Review (RAY); F) Comments to DEC (VMF)

EXHIBIT A

Official DEC and Town of Sterling Maps

ENVIRONMENTAL REVIEW MAP - FOR - VICINITY OF PROPOSED MARTVILLE MINE DEC ID 7-0556-00276 TOWN OF STERLING CAYUGA COUNTY

Legend

- Life of Mine (Approximate)
- Archeological Sites of Sensitivity
- New York State Regulated Adjacent Area Boundary
- New York State Freshwater Wetland
- DEC Water Quality Classification
 - DEC Permit Needed if Navigable
 - Protected C(t), DEC Permit Needed
- National Wetlands
 - Palustrine
 - USDA Poorly and Very Poorly Drained Soils
 - Animal
 - Plant
 - Natural Community
 - Natural Heritage Program Element Occurrence (point)
- Zip Code Area
- Aquifers, Primary
- Mined Land Permit
 - Consolidated Mine
 - Consolidated Mine Reclaimed
 - Unconsolidated Mine
 - Unconsolidated Mine Reclaimed
 - Underground Mine
 - Underground Mine Reclaimed
 - Agricultural Districts
- Town, Village, or City Boundary for New York State

Notes: For illustration only and not for conveyance purposes.
This map does not show all natural resources regulated by NYS DEC, or for which permits from NYS DEC may be required.
Data source: DEC Master Habitat Database.

Any state wetland boundary depicted on this map is only approximate.
In most instances field verification is required to determine the actual wetland boundary.
For assistance with wetland boundaries, please contact the DEC Bureau of Habitat located in Cortland, New York at (607) 753-3095 or (800)-388-8244 ext. 298.

For more information on National Wetlands, or permits required by the U.S. Army Corps of Engineers, please contact the U.S. Army Corps of Engineers at (315) 255-8090 or go to: <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>

For more information on jurisdictions of other agencies please go to: <http://www.dec.ny.gov/permits/6325.html>

Applications forms for DEC permits: <http://www.dec.ny.gov/permits/6222.html>



Map By: John M. Clancy
NYS DEC Environmental Permits
615 Erie Boulevard West
Syracuse, NY 13204-2400
(315) 426-7445 (Voice)
john.clancy@dec.ny.gov
Date: 2/24/2015

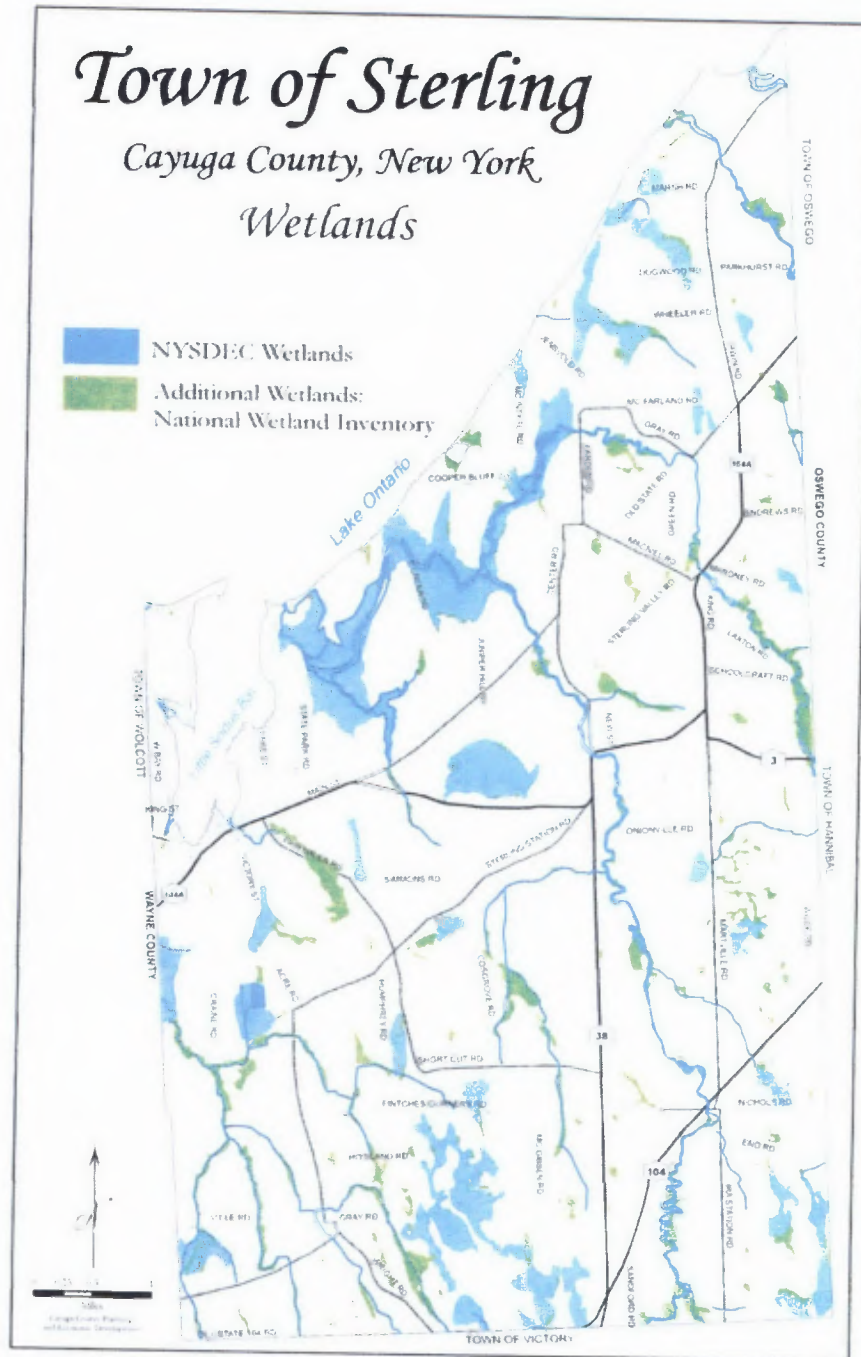


Town of Sterling

Cayuga County, New York

Wetlands

- NYSDEC Wetlands
- Additional Wetlands:
National Wetland Inventory



A5e

Town of Sterling

Cayuga County, New York

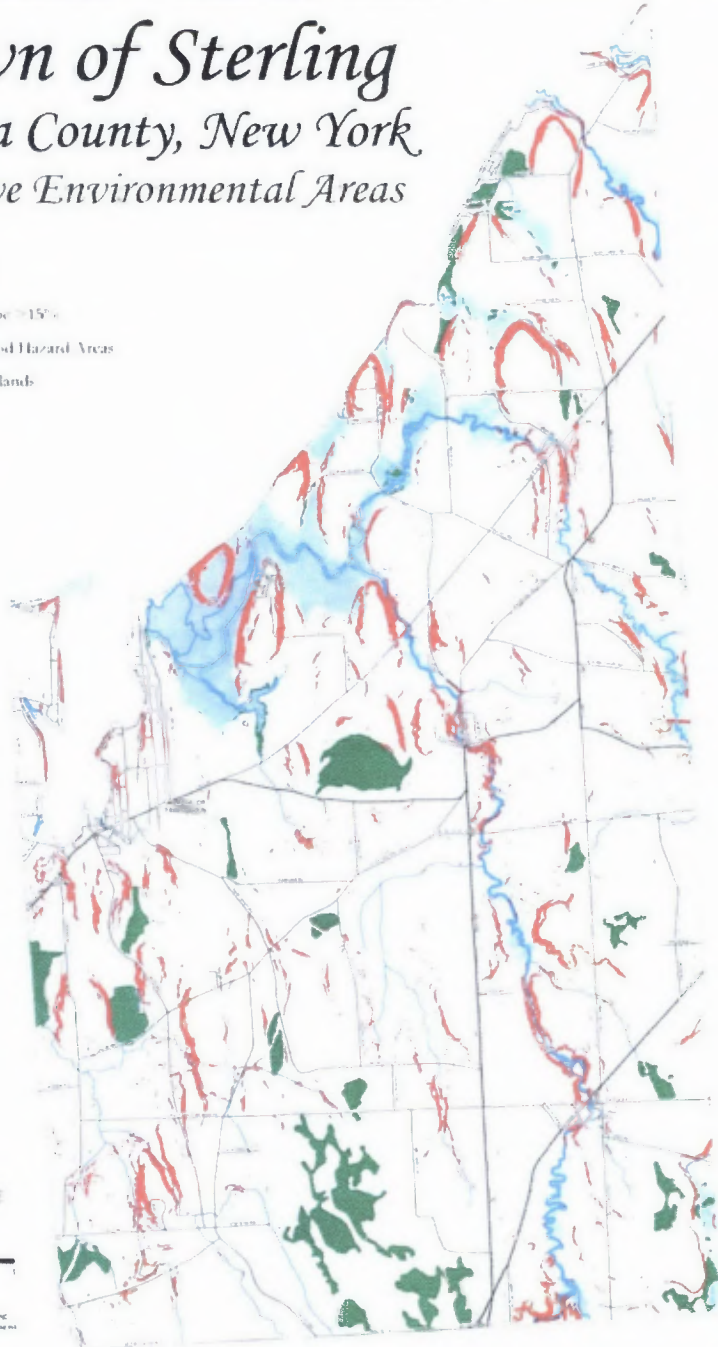
Sensitive Environmental Areas

Legend

-  Slope $\geq 15\%$
-  Flood Hazard Areas
-  Wetlands



Cayuga County Planning
and Economic Development
February 2007



A5a

Exhibit B

Cayuga County GML-239 Committee Minutes

**Minutes
Cayuga County GML 239-l, m & n Review Committee
May 29, 2015**

The Cayuga County GML 239-l, m & n Review Committee was established in 2005 by Cayuga County Legislature Resolution 413-05 as the agency to conduct mandatory reviews in Cayuga County under sections 239-l, 239-m, and 239-n of the General Municipal Law of New York State. The Committee meets monthly to review local actions for potential intermunicipal or countywide impacts.

The meeting was called to order at 10:00AM in the Conference Room on the 5th floor of the County Office Building at 160 Genesee Street in Auburn, New York.

The following committee members were present:

Director of Planning and Development:	Steve Lynch
Director of Environmental Health:	Eileen O'Connor
Superintendent of Highways:	Rich Wheeling (designee)
Environmental Engineer:	Bruce Natale
Director of Soil and Water Conservation:	John Fraser (designee)

A quorum was thereby established.

Others present: John Zepko (Planning Staff) David Nelson (Planning Staff), and Nick Colas (Planning Staff).

Town of Sterling – Special Use Permit, 13181 Sanford Rd

The Committee reconvened the adjourned matter from the May 21, 2015 meeting, and carefully considered the materials provided by the Town related to the proposed Special Use Permit application for 13181 Sanford Rd, as well as information presented to the committee from the Cayuga County Highway Department.

Based upon the information submitted, the Committee recommends disapproving the project due to the following potential intermunicipal impacts.

- Of the x mile route from the mine to state route 104 approximately .2 miles of Sanford Rd and all of County Route 112 lies within the jurisdictional boundary of the Town of Victory. An approval of this project has the potential to adversely impact the road infrastructure of the Town of Victory.
- The design and alignment of Cayuga County Route 112 and Sanford Road, and the configuration of their intersection, creates traffic safety concerns with regard to sight distances and turn radii.

- An increase in heavy commercial traffic of up to 100 trucks per day (10 trucks per hour over a 10 hour period) could result in significant and premature deterioration of County Route 112.

Additionally, the Committee has issued the following comments:

- The intersection of Cayuga County Route 112 and NYS Route 38, as well as the intersection NYS Routes 38 and 104 may also have potential traffic safety issues. However, as NYS Department of Transportation has expressed their intention to address those concerns, the Town should coordinate their review with that agency.
- Town Area Variance was granted for Article 10, Section 10-5,J,2d (emphasis added), which addressed distance between existing residences and the access/egress drives to the facility;
- The Public Hearing Notice, Application for Area Variance, the ZBA Minutes, etc., all address the access/egress Area Variance for Section 10-5,J,2d
- Section 10-5,J,2c (emphasis added), requires a 1000' minimum buffer between mining operations and any structure if the structure is not owned by the mine operator:
 - This area requirement would impact (reduce) the limits of active mining on the subject parcel from the proposed area shown in the Special User Permit application materials
 - Part of the rationale for the Town of Sterling area buffer requirements associated with mining operations, especially Section 10-5,J,2c which requires that operations be a minimum of 1000 LF from any structure not owned by the mine operator, is to protect nearby structures and residents from the impact of mining operations, including dust and particulates. While this is not an intermunicipal impact, but a local impact, it should be addressed by the town in consultation with the Town counsel.
 - The Town did convey this potential environmental impact and local requirement to the DEC (Lead Agency) as an Involved Agency in their letter dated Feb. 26, 2015. It should also be noted that the SEQRA Part 1, Section B, did not identify the requirement for an Area Variance as a required approval needed for the Special User Permit;
 - If the Town Zoning Ordinance at Article 10, Section 10-5,J,2c, rules, then the applicant would need to secure another Area Variance before granting a Special Permit for mining operations closer to the neighboring structure than the 1000' buffer.
 - If the Town determines to proceed with the requirement for an Area Variance, we recommend the Board consult the Town Attorney for a legal opinion determining if the NYS Mined Lands Reclamation Act supersedes or preempts the Town's local zoning requirements under Section 10-5,J,2c; and, if so, what other methods might be available to the Town to ensure these neighboring residences/properties are not negatively impacted (such as the SEQRA review, the comment period of which should be open until June 5, 2015).

**Minutes: Cayuga County GML 239-l, m & n Review Committee Meeting
May 29, 2015**

MOTION BY :Steve Lynch

The Committee recommends disapproving the action
due to intermunicipal concerns

SECOND BY :John Fraser

All voted AYE.

Motion Approved and Carried.

Minutes submitted by John Zepko (staff).

Exhibit C

**Town of Sterling Residents' Petitions
and Correspondence to NYS DEC and
Town of Sterling**

PETITION AGAINST THE PROPOSED 13181 SANFORD ROAD MARTVILLE GRAVEL MINE OPERATION

We, the undersigned, oppose the granting of mining permits to the proposed Martville mine by the Town of Sterling and the NYS Department of Environmental Conservation. Our opposition is grounded in the many violations of the Town of Sterling Land Use Regulations, Comprehensive Plan, and the SEQR environmental review process which the application represents. We are supported in this opposition by the Cayuga County GML-239 Committee which has formally voted against the proposed mine operation.

We are concerned for the integrity and water quality of neighboring wells and springs, and of the Sterling Creek and its wetlands; we are concerned about the quality of air from additive diesel fumes and airborne dust which characterize such gravel mine operations and which will endanger the health of many neighboring residents with serious chronic medical conditions and disabilities; we are concerned for the effects of the mine operations on homes and structures, on safety, and on the character of the neighborhood which includes the Hamlet of North Victory; we are concerned for the value of all neighboring properties which will suffer serious decline from noise, dust, traffic and safety issues which affect appraisals and the opinion of potential residents.

We ask the Town of Sterling's Planning Board and Zoning Appeals Board, together with the DEC, to revisit earlier actions favorable to this mine proposal, and to oppose this project in all future actions.

Signature	Printed Name	Address	Date
<i>Wouda</i>	<i>Tauchnitz Haven</i>		7/27/15
<i>Melinda Seago</i>	<i>Melinda Seago</i>	13755 Martville Rd	7/16/15
<i>John Harrison</i>	<i>John Harrison</i>	146 Martville Rd	7-16-15
<i>Louis Gilbert</i>	<i>Louis Gilbert</i>	Wilde Rd	7-16-15
<i>Ruth Alburghdorf</i>	<i>Ruth Alburghdorf</i>	Trageton Rd	7/16/15
<i>Julia Beck</i>	<i>Julia Beck</i>	105 Kent Rd	7-27-15
<i>William Nunn</i>	<i>William Nunn</i>	Orinville Rd	7-27-15
<i>Caroline Richardson</i>	<i>Caroline Richardson</i>	Sterling NY	7/27/15
<i>Judith A Beuster</i>	<i>Judith A Beuster</i>	San Haven NY	7/27/15
<i>Ruth Stoutenger</i>	<i>Ruth Stoutenger</i>	Sterling, NY	7/27/15
<i>Daniel J. Hicks</i>	<i>DANIEL HICKS</i>	STERLING NY	7/27/15
<i>Deanna Shortlee</i>	<i>DEANNA SHORTLEE</i>	14659 New St Sterling	7/27/15
<i>Kurt Gudel</i>	<i>Kurt Gudel</i>	Tairpoint Marin	7/27/15

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Signature	Printed Name	Address	Date
<i>Alvin Hammond</i>	Alvin Hammond	13177 Sanford Rd	7/14/15
<i>Robin Allinger</i>	Robin Allinger	Martville Ny 13111	7/14/15
<i>Sandy Long</i>	Sandy Long	1899 State Rt 3 Sterling	7-14-15
<i>Kay Harlon</i>	Harlon	15061 State Rt 104 Martville N.Y.	7-14-15
<i>James Harlon</i>		15061 State Rd 104 Martville N.Y. 13111	7-14-15
<i>Judith Chilson</i>	Chilson	14272 Wilder Rd Martville	7-14-15
<i>Edward Chilson</i>		Martville N.Y.	7-14-15
<i>Sage Hall</i>	Hall	Route 104A Sterling N.Y.	7/14/15
<i>John Crook</i>	Crook	13048 Popple Rd Martville N.Y.	7/14/15
<i>Kathy Woz</i>	Nosewicz	13063 Popple Rd 13111	7/14/15
<i>Ann R. Hicks</i>	Hicks	13080 Rt 38 Martville N.Y. 13111	7/14/15
<i>Kristen Ferguson</i>	Kristen Ferguson	13109 St. Rt 38 Martville N.Y. 13111	7/14/15
<i>Christine Paige</i>	Christine Paige	13051 Rt 38 Martville N.Y. 13111	7/14/15
<i>Teff & Tia Couperus</i>		1323 Sanford Rd Martville, N.Y. 13111	7/14/15

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Signature	Printed Name	Address	Date
	Dr. V. M. Fickera, PhD	P.O. Box 44 13156	7-13-15
	Bonnie Sherman	15180 State Rt 104 13111	7-14-15
	Randall B. Leck	13930 State Rt 38	7-14-15
	Pat LaCoub	15618 State Rt 104	7-14-15
	Beth Richards (Jr)	14523 Richmond Ave Fair Haven	7-14-15 7/14/15
	John Togg	130X 151 Fz 112	7/17/15
	Robert C. Byrne	13885 Humphrey Rd Sterling	7-14-15
	Barbara Longley	W. Bay Rd	STERLING, NY.
	Erin Gray	Paple Road	Martville 7/16/15
	Joseph Gapski	13823 Martville Rd Martville	7/16
	Muriel Keeney	12822 Main Street	Sterling - 7-16-15
	Georgia Taylor	12901 Pople Rd Martville NY	13111
	Paulette D. Stott	12901 Pople Rd Martville NY	13111

Journal of Management Inquiry

Journal of Management Education

Journal of Management Education

Journal of Management Education

[illegible]

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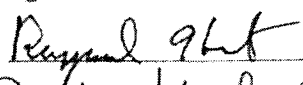
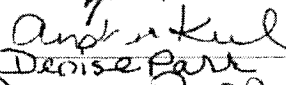
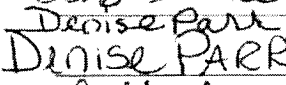
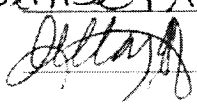
	Signature	Printed Name	Address	Date
	<i>Lorraine Ritchie</i>	Lorraine Ritchie	13256 Sanford Rd Martville NY 13111	7/15/15
Ritchie	<i>Dale Ritchie</i>	DALE Ritchie	13256 Sanford Rd Martville NY 13111	7/15/15
Pople	<i>Dianne Pople</i>	Dianne Pople	13251 St Rt 38 Martville NY 13111	7-27-15
	<i>Nathan Pople</i>	Nathan Pople	13253 St. Rt 38 Martville, NY 13111	
	<i>Casey Pople</i>	Casey Pople	13251 Rt 38 Martville, NY 13111	
	<i>Lionel Pople</i>	Lionel Pople	13253 Rt 38 Martville NY 13111	
Lewis	<i>Rita Lewis</i>	Rita Lewis	13227 St Rt 38 Martville NY 13111	

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Signature	Printed Name	Address	Date
	Raymond Hunt	13311 Ira Station Rd.	7-17-15
	Andrea Krul	13338 Ira Station Rd	7-17-15
	Denise Parr	13319 Ira Station Rd Martville	7-17-15
	DEBRA JASTRAB	13054 Ira Station Rd.	7-17-15

Release of Information

I, Tia Couperus, give permission for the letter written by my daughter, Makenna Couperus, to be submitted to the Town of Sterling Boards and relevant government offices for consideration. I also give my permission for submission of her letter to any local newspaper or media reporting on the subject. This is an account of her personal concerns with the proposed mining project on Sanford Road, Martville.

A handwritten signature in cursive script, reading "Tia Couperus". The signature is written in dark ink and is positioned to the left of the printed name.

Tia Couperus

July 21, 2015

My concerns about the gravel pit

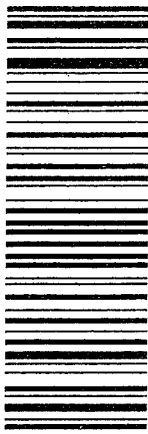
- I am afraid my allergies will be worse. same for my little brother.
- Worried about are dogs safety.
- Worried about are wild life in the area.
- It will be very loud.
- It will make the air more dirty.
- It could cause more accidents.

By Makenna Couperus

Sanford Road, Martville NY.



CERTIFIED MAIL



7015 0640 0000 6740 4110

Alurjer
1317 Sanford
Northville NY 13111

RECEIVED

JUL 22 2015

TOWN OF STERLING

Town of Sterling Planning Board
Town of Sterling Zoning Board of Appeals
1290 State Route 104A
Sterling, NY 13156

The Cauperus family
are close neighbors.
These are two
new letters in
opposition to
the proposed mine.
Also included is
a signed Release
for the Childs letter.
She is 9 years old.

ould be protected by the zoning law
y driveway as well as the other near
ing truck noise and smoke. If it only
et away or if they were only talking
y't object at all. This is essentially a new
this property knowing that it conflicted
to protect residents. If undue
judged on I would argue that the
er was self-inflected when he bought
of undue hardship for residents.

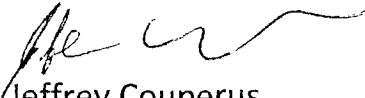
a large scale mining operation. When I
ning laws, knew about the existing pit,
knew about other businesses in the
we liked the area and the lot and
atter to us. I would have no right to
or object to new activity that met the
rea I chose to build in. By reading the
foreseen that a large scale mining
ill mine across the street with all of the
I had known I probably wouldn't have
house on Sanford road. I could have

round a lot elsewhere.

I live across Sanford Road to the south of the ingress/egress of the gravel pit. I built my house there about 5 years ago. As a business and property owner myself, I'm for giving people and companies some freedom to do what they need to make a living and provide jobs. The problem that I have with this project is that the new business they are proposing conflicts with so many of the zoning laws that by allowing the business seems to be undermining the intent of the laws and putting the business's interests over the interests of the residents that were there first. There are multiple residential driveways not only inside the 1000 foot ingress/egress (including mine) but some driveways are literally across the street. There are also multiple residential properties within the 1000' setback. On top of that what they are proposing is not a small operation. There will be trucks every 5 minutes or so disrupting residents that should be protected by the zoning law. The zoning laws were written to protect my driveway as well as the other near driveways from accelerating and decelerating truck noise and smoke. If it only affected a few properties that were 700 feet away or if they were only talking about a few trucks a day I probably wouldn't object at all. This is essentially a new business startup and the owner purchased this property knowing that it conflicted with many zoning laws that were intended to protect residents. If undue hardship is the standard that variances are judged on I would argue that the undue hardship on the part of the pit owner was self-inflicted when he bought the property. Also, the pit will cause a lot of undue hardship for residents. *all*

There was a small pit there before but not a large scale mining operation. When I built my house I was aware of all of the zoning laws, knew about the existing pit, knew about the agricultural activities and knew about other businesses in the area all of which effect property value but we liked the area and the lot and decided that the existing activity didn't matter to us. I would have no right to complain about any of the existing activity or object to new activity that met the zoning requirements for the agricultural area I chose to build in. By reading the zoning laws at the time no one could have foreseen that a large scale mining operation would be permitted in that small mine across the street with all of the setbacks and requirements in the code. If I had known I probably wouldn't have invested all of the money I did putting the house on Sanford road. I could have found a lot elsewhere.

I'm no lawyer but I thought zoning laws were in place to protect not only the adjacent property owners but the entire area affected and variances were for relatively minor deviations needed for unavoidable things that wouldn't hurt other property owners. Just because every adjacent property owner doesn't oppose the mine shouldn't be grounds to allow it. Why should the business owner's interests take priority over the interests of the existing residents that do oppose it when the code is on the side of the residents? If the owner would have bought property that met all or most of the zoning requirements no one would have a right to complain or object. The fact is the property they purchased for the mine is clearly not zoned for it and it is the mine owners own fault not the fault of the people who live near it.

A handwritten signature in black ink, appearing to read 'Jeffrey Couperus', with a stylized, flowing script.

Jeffrey Couperus

13123 Sanford

Martville, NY 13111

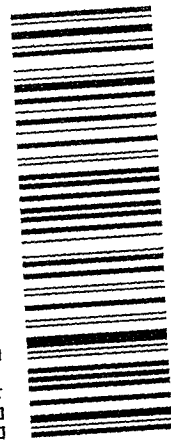
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Allinger
1317 Sanford Rd
Marble NY 13111

Board of Appeals

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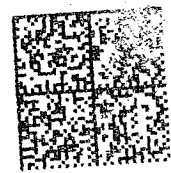
and the town ordinances were here before the
Town Councilman to his family's business associate for al

Town of Sterling Planning Board
Town of Sterling Zoning Board & Appeals
1990 State Route 104A
Sterling NY 13156

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MAILED FROM ZIP CODE 13156

Robin P. Allinger
13177 Sanford Road
Martville, NY 13111

Town of Sterling Planning Board
Town of Sterling Zoning Board of Appeals
1290 State Route 104A
Sterling, NY 13156

July 17, 2015

Dear Town of Sterling Planning Board and Zoning Board of Appeals Members:

I am writing to you to state my opposition to the proposed mining operation on Sanford Road, Martville. I urge you to reject the mining permit application, most particularly because within six of our Sanford Road households, there are one or more persons who have been diagnosed with one or more of the following serious medical conditions:

- *Chronic Obstruction Pulmonary Disease (COPD)*
- *Emphysema*
- *Severe cardiac conditions*
- *Post-Traumatic Stress Disorder (PTSD)*
- *Severe asthmatic conditions*
- *Severe allergy conditions*
- *Stress-aggravated medical conditions, including all of the above, as well as conditions with related chronic pain*

Any and all of these health conditions and disabilities would be severely aggravated by the dust, fumes, vibration and noise which are part of industrial sand and gravel mining operations and their heavy truck traffic. In fact, the negative air quality effects alone from such a mine and the nearby location of its entrance and exit could provoke life-threatening health crises resulting in emergency room visits, further disability, and even death. In addition, one Sanford Road resident who lives near the mine works night shifts and would not be able to sleep in the daytime around such an operation. There is also the limited sight distance and sharp turning angles on Sanford Road, which would involve large truck traffic endangering and impeding school bus, residential vehicle and pedestrian presence and traveling.

I have lived in my home for over 27 years and cherish the environment in which I reside. My neighbors and I agree that this is our neighborhood and these are our homes. We and the Town ordinances were here before the property was sold by a Town Councilman to his family's business associate for almost half a million dollars at

the expense of our health, safety, and welfare. *This proposed mining property is currently assessed at less than a fifth of the selling price*, a fact that suggests suspicious motives, especially since an appropriate level of soil testing has not been done to establish the actual content of the land to be mined. What if the mining of such land releases sulfur and/or toxic materials into the air, surrounding lands, ground water and Sterling Creek? I do not believe that such events can be reversed or repaired under aspects of a "bond".

As a resident of Sanford Road, I wish to make these important health facts, disabilities and risks known to you so that you will realize that it is inappropriate, indeed, illegal to fail to respect our rights and your obligations under the Town of Sterling Land Use Regulations, the Town of Sterling and Village of Fair Haven Comprehensive Plan and other applicable laws of this state and country. I am well aware of the intent of the Cayuga County/Town of Sterling Land Use Regulations, and have listed those intentions most relevant to my opposition to this proposal, along with an argument. These regulations should:

Promote the health, safety and general welfare of the community.

However, the mining operation presents a clear danger to these tenets, as well as, violating our rights as residents.

Reduce congestion on the streets and highways. Secure safety from fire, flood, panic and other dangers.

Besides the new owner's trucks, there is stated to also be *up to ten contractor's dump trucks/tractor trailers per hour* entering and exiting onto Sanford Road. It is obvious that there would be heavy and unsafe truck congestion on the mine's travel route during a ten-hour day and most days of the week.

Provide adequate light and air.

The mining operation will raise constant dust, equipment/truck exhaust fumes and any possible toxic elements present into the air; this air pollution would likely spread quite a distance, negatively impacting the health of residents, livestock and water sources in the area.

Conserve the value of property.

According to a published generic study of the effect of a gravel mine operation on surrounding property sale prices, the properties adjacent to a gravel mine can expect to experience a 30% reduction in sale price, 14.5% at one mile, 8.9% at two miles and 4.9% at three miles. Not only would these value reductions be present, how could anyone of us be able to sell (at a slashed sale price, if at all) and move away from the mine operation?

As stated under these same regulations and the owner's request for variance to such, the ZBA should revisit the variance it already granted and the PB should

reconsider the Special Use Permit for this operation. In relation to these requests, I ask that both boards especially consider:

- the applicant's benefit of a granted area variance, as *weighed against the detriment to the health, safety and welfare of the neighborhood* or community by such a grant;
- whether an undesirable change will be produced in the character of the neighborhood; and,
- whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

There is no question that the proposed mine operation would greatly and negatively bear against the above conditions! *The Special Use Permit regulations note that a mine must "be a substantial improvement to the property in the immediate vicinity". How could there possibly be a "substantial improvement" to adjacent properties? I can only imagine a substantial detriment.* In addition, there is already a formal vote against this mining proposal by the Cayuga County GML-239 Committee.

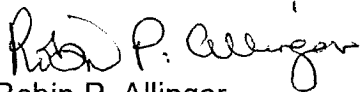
Furthermore, I am very concerned about water sources and the danger to the Sterling Creek from run-off, potential fuel spills and other accidents caused by the mining operation. There is a very real possibility of surrounding ground layers and water pathways shifting in relation to mining disruptions. Many of us have spring-fed wells, supplying clear and tasteful water from an underground source near Sanford Road. With the shifting of earth and stone, these pathways could be hindered, closed, poisoned or otherwise deemed unusable. No bond can replace a well when the water source is ruined for healthful human/animal use. My neighbors and I worry about our homes, which may suffer foundation and structural damage by the mining operations (vibrations, excavation issues, etc.). My home was constructed in 1974 and may be vulnerable to such earthly changes. I have also confirmed that general homeowner insurance policies, such as mine, do not cover damage due to such operations. The peaceful nature of our community and neighborhood, which includes the residential hamlet of North Victory, would be changed forever for the worse. We would even be hindered in selling our property to escape the effects of the mine because the sale prices of our homes would drop because no one will pay assessed property values only to be disturbed by the noise and dust and fumes of a gravel mine literally next door or across the road.

I am quite alarmed by the fact that, as recently as July 15, 2015, the Sterling Highway Superintendent boasted to one of us that expressing our concern to you is a waste of our time because this mine is "a done deal." Many of my neighbors residing on the mining route believe that there is nothing they can do to defend their rights to live peaceably and privately in this neighborhood. Many seem to feel intimidated and fearful

of speaking out against the mining proposal. For instance, I have witnessed the open heckling of opposing residents in Town of Sterling meetings by those who argue in favor of the mine proposal. I have also witnessed at least one ZBA member who seems to sarcastically dismiss our arguments as foolish, unimportant and unwarranted; an appropriate and relevant question posed by me to the ZBA on June 22 was interrupted by a ZBA member, who quickly moved on to another resident's question, which was also suppressed. Although I and other opposing residents adhered respectfully to the Rules of Conduct, our logical questions, facts and opinions were suppressed and dismissed, along with one resident being threatened of eviction from the meeting; this was all amidst unabashed sarcasm and heckling from several persons in favor of the proposal, none of whom asked to speak according to the meeting rules or were asked to leave the meeting because of their outbursts. How can it be that certain persons may support and/or benefit from the approval of this mine, even when the facts and the laws do not support such a decision...***when the detriment to our health, safety, welfare and community should be the real question?***

I also remain very concerned that an earlier variance was granted to this proposed mine with no real care for any of the reasons that the setback ordinances protect: our health, safety and welfare. I am formally asking you – members of the Zoning and Planning Boards - to go back to reconsider and deny the variance request and the Special Use Permit, respectively, in order to protect our basic human rights of continued health, safety and welfare. A copy of this letter is also being sent to the New York State Department of Conservation, because I believe that these facts should be known and considered as important toward their environmental impact studies, as well. Thank you for your attention and consideration in these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin P. Allinger". The signature is fluid and cursive, with the first name "Robin" being more prominent.

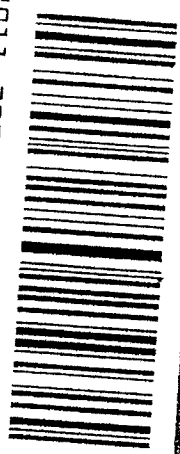
Robin P. Allinger
Resident and Concerned Citizen

cc: Director, Region 7, NYS Department of Environmental Conservation

*Nelle Ritchie
56 Stanford Road
Hawthill New York 13111*

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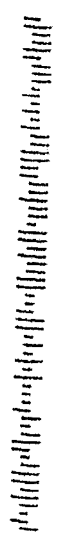
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*Don Jensen
Zoning Board of Appeals
Town of Steuben
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RECEIVED
APR 20 2015
TOWN OF STEUBEN

April 17, 2015

Dear Lisa Somers

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I'm writing because I don't know if I'll be able to make the meeting on April 27, 2015 about the hearing on an area variance request by Christopher Ferlito of C.I. Construction LLC

We are appost to a gravel and sand mining/excavation operation on Sanford Road. We have lived on Sanford Road since 1989 it was a pleasant place to live and raise a family you were lucky to see 10 cars in a day drive by.

With in the past couple years we have had garages go in a Cornahal business more and more traffic road construction logging trucks it looks like 104 and have taken away the woods for the deer and animals to live the deer are now resorting to eating our trees out of our yard their taken away their homes.

I sorry the Keeling sold their property. The road is now built up so high we have to drive our lawn mower to end of the road to stop sign through neighbors driveway because of stone on side of road to get to the other side of road to mow so we don't rip off the mower deck. Now you want us to dodge large trucks.

I have mowed across the road every since I have lived here which has been 26 years now to keep our area looking nice.

I also have loose stone along the edge of the yard not leveled, raked out or rolled down since last fall but we only have 2 season winter when you snowed in and construction that you want to send down our road all summer.

I have never had to complain about my neighborhood before but I enjoy living in the Country and it's being taken away I hope we don't have to move because of the noise from the trucks a lack of privacy. Thank you for hearing us out.

Sincerely yours

Mrs Dale Ritchie

Exhibit D

**Correspondence from
Dr. V. M. Fichera (PhD)
to NYS DEC Region 7 and/or
US Army Corps of Engineers**

SELECTED EMAIL CORRESPONDENCE FROM DR. V. M. FICHERA (PHD) TO THE NYS DEC REGION 7 DIRECTOR AND/OR TO THE US ARMY CORPS OF ENGINEERS, WITHOUT REPLY AS OF 7-27-15

N.B. There are "forwards" within the "Forwarded Messages" below. The main emails forwarded here are numbered to assist the reader in orientation through the document. There are fourteen (14) primary emails with their embedded correspondence. Sanford Road and Town of Sterling residents' correspondence, Dr. Young's independent expert geologist report, as well as Dr. Fichera's formal Comments to the DEC are attached as separate documents.

1----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Tue, Jul 21, 2015 at 11:27 PM

Subject: Please respond with windows of opportunity for a meeting on the proposed Martville mine

To: "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>

Cc: Les Monostory <fishbugm5@twcny.rr.com>, william hecht <wshecht01@gmail.com>

Dear DEC Region 7 Director Lynch:

As you know, it has been almost a month and a half since your office was contacted with our formal request for a meeting at your headquarters. We have not had word from you or your secretary with any proposed meeting dates and times.

We do continue to learn from the permit applicant at the Town of Sterling government meetings what the DEC has been "arranging" for him: tonight he informed us that John Clancy assured him he will have his mining permit by next Thursday, the same day that the comments will be answered as well, that the draft has been written, etc. Of course, correspondence from the public, including this citizen, regularly goes unacknowledged by the DEC -- including but not limited to my request for a full environmental impact study of that Martville mine proposal in the wake of distinguished geologist Dr. Richard Young's review of the moving papers. In short, the DEC Region 7 appears to be continuing to show undue favoritism to mining permit applicants at the expense of sensitive environmental areas which may ultimately be permanently harmed by DEC negligence in the SEQR process.

Further, the Martville mine permit applicant is receiving these assurances even as the DEC mining division has not yet even formally requested that the Natural Resources Division review the permit application. This is in tandem with all of the other irregularities of the SEQR process by the mining division, including but not limited to the mining division's first contact with the NYS Department of Transportation: an email on the very same day that the Negative Declaration was issued, May 4, 2015 -- effectively eliminating that agency from the SEQR process and providing the permit applicant with a premature Negative Declaration. The SEQR process was and continues to be violated, multiple misrepresentations were made by the applicant and the DEC in the moving papers to "cook" the permit application, the archaeological studies have not yet all been completed, the studies recommended by the DOT have not yet been engaged, the independent geologist's recommendations about the testing of wells and water quality concerns, etc. have not been implemented, etc., etc., etc.

Therefore, we look forward to hearing from you by return email with suggested times/dates for our meeting in advance of next Thursday's premature permit so that you may consider our formal input concerning these ongoing irregularities and review the request for a full environmental impact study. My email address as well as those of Les Monostory and Bill Hecht are above in the header of this email.

Thank you for your anticipated assistance in arranging a meeting. These two glaring cases of essentially DEC-"rigged" EAF reviews granted to the same permit applicant and "geologist" appear to be the tip of a very large iceberg of ongoing Region 7 mining and permit non-compliance with multiple state laws and regulations.

Yours truly,

Dr. V. M. Fichera (PhD)

Adjunct Professor
Binghamton University-SUNY

2----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Fri, Jul 10, 2015 at 11:47 AM

Subject: Request for EIS and full environmental impact review of the Sanford Road-Martville mine proposal

To: "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>, "Bimber, David L (DEC)" <david.bimber@dec.ny.gov>, daniel.bishop@dec.ny.gov

Cc: John Clancy <john.clancy@dec.ny.gov>, "McGinn, Barbara A (DEC)" <barbara.mcgin@dec.ny.gov>, david.lemon@dec.ny.gov,

stevan.joule@dec.ny.gov, John Zepko <jzepko@cayugacounty.us>, Les Monostory <fishbugm5@twcny.rr.com>, william hecht

<wshecht01@gmail.com>, CCDistrict01@cayugacounty.us, Richard Young <young@geneseo.edu>, "Robinson, Judy A LRB"

<Judy.A.Robinson@usace.army.mil>, "Crawford, Margaret A LRB" <Margaret.A.Crawford@usace.army.mil>, aaron.c.smith@usace.army.mil,

Bridget LRB Brown <bridget.brown@usace.army.mil>, Sandra Doran <Sandra_Doran@fws.gov>, "Niver, Robyn" <Robyn_Niver@fws.gov>

Dear Region 7 DEC Regional Director, Permit Administrator, and Supervisor of Natural Resources:

In the wake of the potential serious positive impacts identified by the independent expert geologist Dr. Richard Young, as well as his recommendations which are in concert with this request -- together with all of the concerns expressed to the DEC by residents of Sterling and surrounding areas -- I am writing to ask the DEC to implement the EIS and a full environmental impact review of the Sanford Road Martville mine project proposed for the site at the confluence of the Sterling Creek (a tributary of Lake Ontario), its national wetland, a principal aquifer, steep slopes and flood hazard areas.

Especially now, given the information in Dr. Young's report, it appears imperative that a mining proposal on the land adjacent to and on the slopes to the protected waters of the Sterling Creek -- in what the Town of Sterling Land Use Regulations identify as a "sensitive environmental area" -- should be subjected to the most thorough and rigorous review at the disposition of the DEC, including but not limited to, consultation at last with the DEC's own natural resources division personnel as well as relevant Army Corps of Engineers and National Fish and Wildlife Service personnel..

The DEC may have already decided to launch this full review; if not, please consider this to be a formal request that it do so.

It is not an exaggeration to say that many, many neighbors of the proposed project -- residents of Martville and the Hamlet of North Victory as well as adjacent farm herds, the stocked trout in the stream, etc. -- risk either losing their water supply or losing the quality of their water supply, as their wells and springs and the Sterling Creek tributary of Lake Ontario and its wetland may become silted, sedimented, and otherwise blocked and/or polluted from this mining project. Inter alia, there are many, many issues of safety as well concerning the proposed mine operation's use of narrow town and county roads shared with the residential Hamlet of North Victory and the Town of Victory -- safety concerns which were among those which prompted the Cayuga County GML-239 Review Committee to vote against the project and thereby require a super-majority vote if the Town Planning Board ignores their recommendation against the granting of a Special Use Permit.

Further, the bonds which the DEC requires for these mining permits do not in any way address such potential catastrophic effects on the quality of life of residents and livestock, and/or the water quality of the tributary and its adjacent national wetland and principal aquifer. The permit applicant has already shown apparent disregard for the SEQR process and for his own proposed Storm Water Control Plan, as the DEC was informed, apparently after the premature Negative Declaration, of his clear-cutting of about ten acres of the Life of Mine that he had designated as "wooded" in his application from June 2014 on. Indeed, even the archaeologist engaged for the SHPO studies warned him in Fall 2014 not to clear the land above the Sterling Creek before she had the opportunity to conduct her study; when she returned in Spring 2015, she discovered he had ignored her warning and had earlier grubbed the land with no berms constructed for run-off control (source: personal conversation with Nikki Waters of Alliance Archaeological Services, July 2, 2015). In a personal conversation with me at Sterling Town Hall on June 23, 2015, the permit applicant admitted that logging took place during Summer 2014 under the previous owner and in Fall 2014 under his own auspices when the title of the land transferred to him.

Further, the permit applicant has already at least once declared bankruptcy, as recently as 2011 in his young career (cf. <http://www.bankruptreport.com/ny/oswego/ferlito-christopher-j>). It is not beyond the realm of possibility if not likelihood that any small mining operator granted a DEC permit would resort to such a filing to avoid responsibility for whatever serious deleterious effects his/her operation would have on the health and safety of neighboring residents and the environment. It appears of high importance that the DEC perform a thorough environmental impact study before any permitting is contemplated, in order to ascertain the extent of the risk of positive effects upon the environment from the proposed project.

I look forward to receiving confirmation that the DEC has stopped the clock on the SEQR process as a result of all of the new information it has received and the new studies which need to be conducted (e.g. water quality, well testing, etc.) -- and that the DEC is now engaged or will soon be engaging in a full environmental impact review.

Yours truly,

Dr. V. M. Fichera (PhD)

Adjunct Professor
Binghamton University-SUNY

3 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Thu, Jul 23, 2015 at 3:53 PM

Subject: Formal complaints re: 13181 Sanford Road, Martville, NY: filled national wetland and protected Sterling Creek waters; endangered species; USACE and EPA lack of due diligence

To: Sandra Doran <Sandra_Doran@fws.gov>

Cc: "Niver, Robyn" <Robyn_Niver@fws.gov>, "Crawford, Margaret A LRB" <Margaret.A.Crawford@usace.army.mil>, Bridget LRB Brown <bridget.brown@usace.army.mil>, "Robinson, Judy A LRB" <Judy.A.Robinson@usace.army.mil>, aaron.c.smith@usace.army.mil, karl.d.jansen@usace.army.mil, michael.a.busby@usace.army.mil, R2_Web_Inquiry@epamail.epa.gov

Nota Bene:

The email below contains information concerning the status of the land at 13181 Sanford Road in Martville from September 2014 through June 2015, providing suspicion of runoff silt and sedimentation in the adjoining wetland and creek.

The documentation herein provides evidence of logging pre-October 2014, which could have endangered the habitat of the Indiana myotis bat and potentially other endangered species in the wetland and the stream. The USDA photographs at its Soil Map Website from September 14, 2014 (cf. <http://websoilsurvey.nrcs.usda.gov/app/> for the above address) show the intermediate stage of logging and the attached amateur drone photo shows the final grubbed status of approximately ten acres of the land above the national wetland and the Sterling Creek as of June 29, 2015 -- after the heavy snows and flash flood rains of the spring which almost certainly would have resulted in fill in the wetland and stream waters.

My personal conversation with the Alliance Archaeological Services owner (cf. email below) provides additional evidence of the timeline and of the lack of any storm water pollution control measures at the site subsequent to the logging and grubbing of the land by the permit applicant. The archaeologist also revealed that the permit applicant cleared the area with intentional disregard for the possible endangerment of the requisite archaeological studies because she verbally warned him about the area; his disregard of the logging, archaeological, and storm water protection protocols likely thereby threatened habitats of the endangered bat and other species, as well. The DEC was receiving multiple written assurances from the permit applicant throughout the period of June 2014 to May 2015 that the entire area was wooded, with the exception of the earlier mine location, and that the applicant would respect storm water pollution control practices; the controls apparently did not take place, as attested to both by the photographic evidence and the testimony of the archaeologist.

Please also consult the NFWS wetland finder maps as well as the DEC Christopher Construction map (cf. attached) which both clearly indicate the presence of a Federal palustrine wetland and protected Sterling Creek bordering the steep slopes upon which the permit applicant intends to mine gravel sixty feet deep above the wetland. If the Army Corps of Engineers has written documentation of a subsequent formal delineation of the wetland to justify the permit applicant's quoting the Army Corps as saying "There is no wetland there," please provide the name and date of the relevant documents so that I may add a request for their inspection to my July 5, 2015 formal FOIA request of the Army Corps which has not yet been acknowledged by the Buffalo District.

I would like to suggest that the NFWS and the Army Corps and the EPA consult the information contained on the NFWS wetland finder map as well as the attached DEC-generated map so that your multi-agency review and recommendations may be coordinated and include the Federal wetland and protected stream. I remind all parties that the information from these government maps and photographs, supplemented by amateur drone photography, supports my earlier and instant formal complaints to the Army Corps and to the NFWS that there may have been violations of the Federal laws and regulations which your agencies are sworn to protect by investigation and enforcement. To these I add the instant complaints to all three agencies, to include as well the EPA.

To date, the Army Corps of Engineers has failed to reply to correspondence, formal complaints, and evidence presented in these matters since the latter part of June 2015. The Army Corps of Engineers representative who visited the LOM on June 12, 2015 has, by her own admission, only walked the Life-of-Mine area, never visiting the wetland below. Therefore, the allegations proffered by the permit applicant that "There is no wetland there" are, to date, unsubstantiated by the Corps with any documentation in any of its minimal correspondence to the undersigned to date.

I therefore expect to receive responses to my FOIA request of the Corps, and to my formal complaints in these matters before both Federal agencies, with all agencies performing due diligence in these important environmental matters where the DEC, as well, has failed to perform due diligence in the NYS SEQR process, as documented in detail in correspondence sent to both the NFWS and the Army Corps of Engineers.

- Dr. V. M. Fichera (PhD)

Adjunct Professor
Binghamton University-SUNY

----- Forwarded message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Thu, Jul 23, 2015 at 12:23 AM

Subject: Re: Martville Mine, Town of Sterling, Cayuga County (14PR3874 and 15PR02499)

To: "Clancy, John M (DEC)" <john.clancy@dec.ny.gov>

Cc: "Perazio, Philip (PARKS)" <Philip.Perazio@parks.ny.gov>, "Vandrei, Charles (DEC)" <charles.vandrei@dec.ny.gov>, "cjf9679@yahoo.com" <cjf9679@yahoo.com>, "Bimber, David L (DEC)" <david.bimber@dec.ny.gov>, "Nikki Waters, Alliance Archaeology" <nwaters@alliancearchaeology.com>, "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>, "McGinn, Barbara A (DEC)" <barbara.mcgin@dec.ny.gov>, Clint Halftown <clint.halftown@gmail.com>, timtwoguns@verizon.net, RachelPolansky@localsyr.com, neil@wayuga.com, Randy Lawrence <tsterlin@twcny.rr.com>, lsomers2@twcny.rr.com, Lisa Cooper <lcooper2@nycourts.gov>

Dear John Clancy:

It was my impression in speaking to both Mr. Perazio of the Parks Service and Mr. Vandrei, a DEC archaeologist, that the OPRHP's recommendation is that the entire Life of Mine area be subject to the archaeological studies before the formal granting of a mining permit to ensure the process of preservation of possible Native American heritage artifacts and remains within the area of the LOM.

I should add that Ms. Nikki Waters of Alliance Archaeological Services, who performed the first two of the studies of the four required "phase" areas of the proposed Martville mine, informed me in a phone conversation on July 2, 2015 that, while she was engaged in the first onsite study last fall, she warned the mine operator not to log or grub the next planned area for investigation before she had the opportunity to conduct the second area study. She recounted to me her surprise to discover that her warning was not heeded: when she went to the site for the second study around April 2015, she discovered that the land had already been cleared, that no runoff protection berms had been established, etc. She did feel that, luckily, she was able to find enough undisturbed land to do the requisite diggings. Indeed, aerial photos of the site, both from the USDA on September 14, 2014 and from a private amateur drone operator on June 29, 2015, confirm her statements.

It would appear that to avoid a repetition of this (and any/all such applicant) operator's "misunderstanding" of the expected protocols, the DEC should follow the recommendations of its own archaeologist, as well as the Parks Service, that all permit applicants complete the requisite archaeological studies for the entire proposed Life of Mine area before a mining permit is granted, for the protection of Native American heritage, the land itself, and to ensure compliance with the SEQQR process.

Among other interested parties, I have cc'ed on this communication the Cayuga Nation leaders with whom I have been in contact concerning these matters.

Yours truly,
Dr. V. M. Fichera (PhD)

Adjunct Professor
Binghamton University-SUNY

On Wed, Jul 22, 2015 at 4:59 PM, Clancy, John M (DEC) <john.clancy@dec.ny.gov> wrote:

Hello Mr. Perazio. Thank you for your inquiry.

Our review on the above referenced mining permit application continues.

If a DEC mined land reclamation permit is issued, a permit condition would be included, specifically stating that an archeological investigation must be conducted in respect to cultural resources and reviewed/approved by NYS OPRHP prior to expansion of the mine into areas that have not yet been investigated.

Appropriate mitigation measures to protect cultural resources would be required, if and as needed, based on OPRHP's recommendations.

Thank you for the opportunity to clarify.

Respectfully yours,

John

From: Perazio, Philip (PARKS)
Sent: Wednesday, July 22, 2015 1:26 PM
To: Clancy, John M (DEC)
Cc: Vandrei, Charles (DEC); cjf9679@yahoo.com; V. Fichera
Subject: Martville Mine, Town of Sterling, Cayuga County (14PR3874 and 15PR02499)

Mr. Clancy,

I am contacting you regarding the above-reference project. We have reviewed archaeological reports for two segments of this property. However, it is our understanding that the life of mine permit under review by DEC encompasses a larger area than what we have reviewed. We would like to inquire whether DEC will require that the remainder of the permit area be subjected to archaeological investigation before the permit is issued or if a stipulation will be included that an investigation be conducted prior to expansion of the mine into areas that have not yet been investigated.

Thank you for your attention to this matter.

Philip A. Perazio
Historic Preservation Program Analyst – Archaeologist

Division for Historic Preservation

New York State Parks, Recreation & Historic Preservation

Peebles Island State Park, P.O. Box 189, Waterford, NY 12188-0189

518-268-2175

Philip.Perazio@parks.ny.gov

www.nyparks.com/shpo

4 ----- Forwarded Message -----

From: **V. Fichera** <vmfichera@gmail.com>

Date: Wed, Jun 17, 2015 at 3:50 PM

Subject: Counterpoint to: Are there penalties for deliberate misrepresentations on formal DEC permit applications?

To: "Bimber, David L (DEC)" <david.bimber@dec.ny.gov>

Cc: "McGinn, Barbara A (DEC)" <barbara.mcgin@dec.ny.gov>, "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>, Les Monostory <fishbugm5@twcny.rr.com>, "Clancy, John M (DEC)" <john.clancy@dec.ny.gov>, "Spadafore, Michael S (DEC)" <michael.spadafore@dec.ny.gov>, "Lucidi, Christopher M (DEC)" <christopher.lucidi@dec.ny.gov>, "Tracy, Elizabeth A (DEC)" <elizabeth.tracy@dec.ny.gov>

Dear David Bimber:

Unfortunately, your "preference" -- in the context of repetitively-submitted inaccurate information which substantively alters the veracity and validity of the conditions under which an application is evaluated -- fosters precisely the type of "gaming" which I have described in my email as the generic scenario. Applicants have every interest to make misrepresentations with the knowledge that an over-burdened DEC staff -- and the difficulty for the public to review the materials onsite in Syracuse -- virtually guarantee that applicants may commit fraud with impunity.

Obviously, anyone who has knowledge of fraud perpetrated against the DEC, the public, and the environment is free to himself or herself contact the NYS Attorney General and the NYS Department of Education. Of course, from the point of view of the citizenry, we would prefer that the DEC actually enforce the regulations and use the full force of the penalties at its disposal for the punishment of fraudulent activity.

Failure on the part of a state agency to perform due diligence, the appearance of an agency's provisional Negative Declarations as though it were definitive (as the Website link below attests), in online official agency documents which parrot the fraudulent representations of applicants as if they were the statements of the DEC itself, etc. -- all erode the rights of citizens under state and municipal laws by the pernicious inferences and adversary effects perpetrated by the Department's certification of those misrepresentations as if they were true, when they are not.

Is that not the subject matter of a potential Article 78 against the agency? Why would the agency choose to risk that rather than prosecute obvious offenders?

Yours truly,

Dr. V. M. Fichera (PhD)

On Wed, Jun 17, 2015 at 3:29 PM, Bimber, David L (DEC) <david.bimber@dec.ny.gov> wrote:

Dr Fichera:

Thank you for your note. If Department staff identify incorrect or inaccurate information in application materials we have several options in addressing those deficiencies.

1. Initially, if inaccuracies are identified; staff would likely return the application materials to the applicant, identify the error, and request that the applicant provide a correction. Our applications forms and supporting requirements are sometimes revised and can often be difficult to understand or confusing, so that even experienced applicants have difficulty completing them without assistance. Minor errors are not uncommon and are easily corrected.
2. If staff believe that the level of fraud rises to the level of criminal behavior, the case can be referred to either the local District Attorney, The NYS Attorney General's Office, or the US Attorney for suspected federal violations.

3. The Uniform Procedures Act, the regulation that governs the administration of permit applications authorized by the Environmental Conservation Law, identifies "materially false or inaccurate statements in the permit application or supporting papers" as one of the potential grounds for modification, suspension or revocation of an application/permit at any time.

4. Fraudulent plans or other documents that are stamped by a licensed professional engineer can also be referred to the NYS Education Department for review.

In my experience; options 2, 3 or 4 are seldom used and only in the most egregious situations. My preference is to obtain accurate information in direct communication with the applicant.

If you need further clarification, please drop me a note.

Thanks

Dave

David L. Bimber

Regional Permit Administrator, Division of Environmental Permits

New York State Department of Environmental Conservation

615 Erie Blvd. West, Syracuse, NY 13204

P: (315) 426-7440 | F: (315) 426-7425 | david.bimber@dec.ny.gov

www.dec.ny.gov | |

From: V. Fichera [<mailto:vmfichera@gmail.com>]

Sent: Wednesday, June 17, 2015 10:59 AM

To: Bimber, David L (DEC)

Cc: McGinn, Barbara A (DEC); Lynch, Kenneth (DEC); Les Monostory

Subject: Are there penalties for deliberate misrepresentations on formal DEC permit applications?

Dear DEC Regional Director of Permits David Bimber,

Barbara McGinn referred me to you for a possible response to this question, with which she is unfamiliar in her experience: If an applicant for a DEC permit is found to have made multiple substantial misrepresentations in the formal documents submitted to the DEC in order to obtain a Negative Declaration, and ultimately a permit, are there any penalties, civil or criminal, for such transgressions?

As things stand, the permit process allows applicants to "game the system" in the following manner: submit false information to DEC upon which the DEC relies to issue a Negative Declaration. The Negative Declaration, even though subject to public comment, appears to be a final agency action (cf. e.g. http://www.dec.ny.gov/enb/20150506_not7.html) and the applicant then goes to Town government and asks that the relevant boards (Planning, Zoning Appeals, etc.) make their determinations on the basis of that Negative Declaration -- indeed, formally requesting that the Town not wait for the end of the comment period, etc. Again, this is a generic case I am posing for information and the Website cited was as an example of the format used by the DEC to convey such information to the public.

This is, of course, highly problematic because there can be major factual errors in the application which, once identified, might lead the DEC to significantly alter or even rescind its Negative Declaration, but in the meantime, the applicant has the opportunity to effectively suppress resident complaints to the Town about such misrepresentations of fact, citing the pre-emption by the mining statute, prejudicing the Town government against concerned residents -- all based upon the Negative Declaration which is posted as if it were the final agency action. Indeed, the applicant can have multiple permit applications and play this game multiple times, sequentially or concurrently.

Further, unscrupulous attorneys for applicants game this even further, telling Town Boards that the local government may not impose setbacks, etc. unless the DEC orders them specifically, even though the NYS Department of State instructs Town governments to read the Schadow v. Wilson case for the reaffirmation of all zoning authority except the regulation of only mining activities (at this URL with convenient links to the

ruling's cited cases: http://www.leagle.com/decision/1993244191AD2d53_1239.xml/MATTER%20OF%20SCHADOW%20v.%20WILSON) -- to which I would myself add, the NYS Court of Appeals' specific reasoning in its ruling In the Matter of Mark S. Wallach, Chapter 7 Trustee for Norse Energy Corp. USA v. Town of Dryden et al.(cf. <http://www.nycourts.gov/ctapps/decisions/2014/jun14/130-131opn14-decision.pdf>). While City Planning and Zoning Boards might have members who can see through such attorney ruses and misrepresentations of law, Towns rarely have board members with such formal backgrounds, and thus misrepresentations of NYS Environmental Law and case law are added to the weight of the seemingly final Negative Declaration. [Yes, the specific case which I have commented upon in earlier emails includes this generic scenario, unfortunately.]

I am raising these issues generically above. Your response concerning the existence of such penalties does not depend upon the allegations made in the instant case. I would simply appreciate knowing if the DEC has any penalties, civil or criminal, for substantial misrepresentations of fact made in the application process. If not, then clearly there is no reason for any application to the DEC to be truthful on the part of applicants -- for if no one from the public submits comments identifying the misrepresentations, then the applicant can get away with a Negative Declaration and eventually even a DEC permit to proceed with questionable environmental practices -- because the benefits from lying are well worth the risk of discovery when no penalties are involved.

As Ms. McGinn has informed me, you have significant experience in not one but two DEC regions. I would hope that you will be able to reassure me that the DEC does indeed have in place a mechanism for penalizing applicants who make false representations on the official forms and in the formally-required submissions to the DEC.

These generic questions are independent of my formal request of the Department on June 16, 2015 that the Town of Sterling at the very least be informed that the DEC's process does not preclude the substantial revision and/or withdrawal of its issued Negative Declaration.

Yours truly,

Dr. V. M. Fichera (PhD)

5 ----- Forwarded Message -----

From: **V. Fichera** <vmfichera@gmail.com>

Date: Mon, Jul 20, 2015 at 4:32 PM

Subject: Sterling Creek: "stressed" from silt/sedimentation in 2005 -- DEC needs to update the water quality indices for the proposed Martville mine area

To: "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>, "Bimber, David L (DEC)" <david.bimber@dec.ny.gov>, John Clancy <john.clancy@dec.ny.gov>, daniel.bishop@dec.ny.gov

Cc: Les Monostory <fishbugm5@twcny.rr.com>, william hecht <wshecht01@gmail.com>, david.lemon@dec.ny.gov, steven.joule@dec.ny.gov, "McGinn, Barbara A (DEC)" <barbara.mcgin@dec.ny.gov>, Richard Young <young@geneseo.edu>, CCDistrict01@cayugacounty.us, Randy Lawrence <tsterlin@twcny.rr.com>, Lisa Cooper <lcooper2@nycourts.gov>, Isomers2@twcny.rr.com

Dear DEC Region 7 Director Kenneth Lynch, et al.:

In consulting this DEC water quality document online, http://www.dec.ny.gov/docs/water_pdf/pwllontcent.pdf, I note on p. 122 that since 2005 the Sterling Creek tributary of Lake Ontario is known to be stressed and that silt/sedimentation is an issue. I also note on other pages at the DEC Website that the Sterling Creek is stocked by the DEC with Steelhead trout and Pacific salmon. I further note, more than in passing, that the DEC does not appear to publish online all of the necessary referenced maps for the public to consult when reading these documents.

Yet the mining division of the DEC has permitted the formal EAF documents for the proposed Martville mine to list that there is no fishing in the Sterling Creek which runs on the property just below the LOM, and has not tested for water quality -- or air quality -- even as written concerns about dust and particulate matter pollution as well as silt/sedimentation from run-off into the wetland and the stream are without response from the DEC.

I have written to the DEC on July 10, 2015 to request that a full environmental impact study be performed; there has been no acknowledgement of receipt of that communication.

I am writing yet again because the Sterling Creek and its wetland and stocked fish almost certainly have suffered impacts from runoff from the watershed and from the grubbed acreage at 13181 Sanford Road, Martville during this spring and now this summer 2015 with the steep snow melts and heavy flash flood rains we have been enduring in this part of the state.

I ask that the status of the waters of the Sterling Creek be tested in the vicinity of that proposed mining site and that all relevant baseline water quality parameters be documented before any possible mining permit is issued. The DEC's inventory on that Lake Ontario tributary is at least a decade old; indeed, in other DEC documents, the last water quality testing of the Sterling Creek is listed as 2001. The DEC needs to be able to document impacts to the Sterling Creek and its wetland which have already arisen in order to recognize what may in the future arise as a result of onsite activities by a potential DEC-permitted land owner and his business associates (Riccelli-Northern, et al.).

Of course, this request is in addition to Sterling residents' and the independent expert geologist Dr. Young's concerns for the wells and springs located in the vicinity of that part of the Sterling Creek and the Life-of-Mine area. I have already documented that the DEC has permitted its formal EAF for a Negative Declaration to state that there will be no impact to any wells when not one single resident's well or spring has been tested in the vicinity of, or even on the site of, the proposed mining operation. The apparent lack of oversight exhibited by the DEC in these matters regarding mining permits is nothing short of astounding.

Yours truly,

Dr. V. M. Fichera (PhD)

Adjunct Professor
Binghamton University-SUNY

6 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Wed, Jul 22, 2015 at 9:54 AM

Subject: Allegations that DEC experts would dispute the findings/recommendations of Dr. Young's report with respect to the water table, wells, etc.

To: "Spadafore, Michael S (DEC)" <michael.spadafore@dec.ny.gov>

Cc: John Clancy <john.clancy@dec.ny.gov>, Richard Young <young@geneseo.edu>, "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>,

"McGinn, Barbara A (DEC)" <barbara.mcgin@dec.ny.gov>, "Bimber, David L (DEC)" <david.bimber@dec.ny.gov>

Dear Michael Spadafore:

I have just had a conversation with John Clancy, the contact person for the Martville mine permit application, in which he communicated to me that all of my communications to the DEC have been received but that the Division of Water experts within the DEC with whom you regularly consult dispute such deleterious effects on the water table and neighboring wells, etc. which Dr. Young stated were possible at or surrounding the LOM.

You will recall that in his report, Dr. Young recommended, inter alia, that wells be tested, etc. and it is my impression from my conversation with John Clancy that the mining division has no intention of ordering any further studies at all, let alone of water and wells, in its review of the permit application subsequent to received comments. I have spoken with members of the Natural Resources staff and apparently they have not been asked to review the permit application, either.

Please provide me with the name and contact information of the DEC water experts upon whose opinions the mining division is relying as it allows the applicant's geologist to "infer" the water table from the single well onsite, and to fail to do any of the testing recommended by the independent expert geologist who volunteered his review of the DEC permit application materials.

Further, John Clancy indicated that the NYS Department of Health would ordinarily become involved in the matter of wells and well water quality should an issue arise. I would like as well to have the name and contact information for the person or persons within the NYS DOH who would be the experts your division would consult in these matters were a problem to be identified.

Thank you for your anticipated assistance in contacting the DEC Water Division and the NYS DOH in this matter of the DEC's extraordinary insistence on no further testing of anything (water quality of the Sterling Creek, wells, water table, archaeological studies, etc.) in the wake of voluminous comments detailing the manifold errors and misrepresentations in the DEC's conduct of the SEQR process.

Yours truly,

Dr. V. M. Fichera (PhD)

Adjunct Professor
Binghamton University-SUNY

7 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Fri, Jul 24, 2015 at 1:19 PM

Subject: A one-hundred year old house adjacent to Martville mine lot on its northwest corner, and other missing facts

To: "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>, "Bimber, David L (DEC)" <david.bimber@dec.ny.gov>, John Clancy

<john.clancy@dec.ny.gov>

Cc: "Vandrei, Charles (DEC)" <charles.vandrei@dec.ny.gov>, "Perazio, Philip (PARKS)" <philip.perazio@parks.ny.gov>,

daniel.bishop@dec.ny.gov, david.lemon@dec.ny.gov, steven.joule@dec.ny.gov, "McGinn, Barbara A (DEC)" <barbara.mcgin@dec.ny.gov>, Randy Lawrence <tsterlin@twcny.rr.com>, Lisa Cooper <lcooper2@nycourts.gov>, Isomers2@twcny.rr.com, John Zepko <jzepko@cayugacounty.us>

Nota Bene:

At the July 21, 2015 Town of Sterling Planning Board meeting, the former owner of the house located on lot 20.00-1-64.11 informed the Town government that that residence, now owned and occupied by Frank J. Nicodemus and his family, is one hundred years old and has a stone foundation or basement.

The misrepresentation on the Structural Archeological Assessment Form (SAAF) in question 6 of Part 1 that no structures surrounding the mine property pre-date 1940 is yet another of the serious problems with the DEC's flawed review of the Martville mine permit application as Lead Agency. That the current owner of that residence bordering the 13181 Sanford Road Martville mine property also works nights and would be impeded from sleeping in the daytime by such an operation -- and that members of his family have serious medical conditions which would be impacted by the effects of mining on air quality -- should also be of interest and concern to the DEC.

In fact, a survey of and by several residents of Sanford Road reveals that at least eight of the residences have household members with diagnoses of one or more of the following: COPD, asthma, allergies, cardiac conditions, emphysema, PTSD and other stress-related disabilities which would be affected by the vibrations, the noise, the dust, and the diesel fumes of such a mine/quarry operation.

These are among the many important environmental, archaeological, and health facts which the applicant and the DEC did not take into account during the incomplete SEQR review preceding the prematurely-issued Negative Declaration on May 4, 2015.

Also, at that July 21, 2015 Sterling Planning Board meeting, residents gave testimony that the permit applicant did visit them at their houses earlier in the application process, but that he misrepresented his proposed mine as being substantially the same as the past small operation, informing them that he owned only a few trucks, etc. Only later, at the official Town of Sterling Zoning Board of Appeals meeting in April 2015 did the residents who attended that meeting learn that the proposed mining operation was several times over as large and that other contractors with much larger trucking equipment, including Riccelli-Northern, would be hauling gravel and sand from the proposed mine for major projects in other counties.

Further, the Sterling Zoning Board of Appeals, also ignorant of many of these missing facts and health circumstances, granted an unprecedented entrance/egress variance from the 1000 foot setback requirements from houses mandated by the June 2014 Land Use Regulations -- regulations which doubled the required 500 foot setback of the earlier Sterling Zoning Law of 1997.

The DEC and the Town of Sterling are obligated by state law and their own regulations to take the time necessary to perform the requisite studies to redress the many misrepresentations and errors of fact in the moving papers of the DEC files which have unfortunately become replicated in the Town of Sterling's files as well -- and, inter alia, to engage the missing archaeological and transportation studies which the applicant eschews for obvious reasons, as well as to conduct the necessary water quality and well studies which the independent geologist/hydrologist recommends to better ascertain how low the water table might drop from the planned removal of up to sixty feet of overburden, affecting residential wells and springs of the vicinity.

To do less would appear to be a violation of the public trust -- and of the rule of law.

- Dr. V. M. Fichera (PhD)

8 ----- Forwarded Message -----

From: Clancy, John M (DEC) <john.clancy@dec.ny.gov>

Date: Thu, Jul 9, 2015 at 9:13 AM

Subject: RE: Independent expert geologist's report on the Sanford Road-Martville mine DEC and Town of Sterling mining permit application

To: "V. Fichera" <vmfichera@gmail.com>, "young@geneseo.edu" <young@geneseo.edu>

Dear Dr. Fichera and Dr. Young:

Thank you for providing this additional information. Just wanted to let you know that we received it.

Respectfully yours,

John

From: V. Fichera [<mailto:vmfichera@gmail.com>]

Sent: Wednesday, July 08, 2015 10:55 AM

To: Lynch, Kenneth (DEC); Bimber, David L (DEC); Clancy, John M (DEC); McGinn, Barbara A (DEC); Lucidi, Christopher M (DEC); Spadafore,

Michael S (DEC); Tracy, Elizabeth A (DEC); tsterlin@twcnny.rr.com; LCooper2@nycourts.gov; lsomers2@twcnny.rr.com; info@ontarioorchards.com; Crawford, Margaret A LRB; Robinson, Judy A LRB; aaron.c.smith@usace.army.mil; Bridget LRB Brown; sandra_doran@fws.gov; Niver, Robyn
Cc: Bishop, Daniel (DEC); Lemon, David (DEC); Joule, Steven J (DEC); Vandrei, Charles (DEC); Perazio, Philip (PARKS); Parmley, Elizabeth (DOT); Covert, Christopher P. (DOT); John Zepko; ccdistrict01@cayugacounty.us; Jean wilkinson; vfairhav@twcnny.rr.com; Richard Young
Subject: Independent expert geologist's report on the Sanford Road-Martville mine DEC and Town of Sterling mining permit application

Please see the below email just received from Dr. Richard Young with his geologist report and recommendations, together with its appended materials, also sent by him, in the forwarded attachments.

Dr. Richard Young is Distinguished Service Professor Emeritus of Geological Sciences at SUNY-Geneseo. He was one of the authors of the USGS NYS Finger Lakes Surficial Map and has served as an expert consultant on myriad geology, hydrology, etc. projects throughout his career. He attached his resume as well as his report, and also appended a July 8, 2015 *Democrat and Chronicle* editorial on open government.

Please note that the documents submitted to Dr. Young for his review included all those publicly posted on the Cayuga County GML-239 Committee's Website preceding their formal vote to the Town of Sterling recommending that the Town government reject the mining application for multiple inter-municipal safety and highway issues. These documents, publicly posted on the Internet by that committee were supplemented by electronic documents provided to me by the DEC subsequent to my visit to the Syracuse Region 7 headquarters during the official comment period on the pre-mature Negative Declaration, as well as copies or links to the Town of Sterling Land Use Regulations and the Town of Sterling / Village of Fair Haven Comprehensive Plan, formally adopted in 2010 and made part of the Town of Sterling Land Use Regulations in 2014.

These documents are hereby formally submitted to the DEC, the Army Corps of Engineers, the National Fish and Wildlife Service and all of the members of the Town of Sterling government, prior to the announcement of any final decisions on the Sanford Road Martville Mine DEC mining permit and Town of Sterling Special Use Permit application in this matter.

This information and its important recommendations are submitted in the hope that all Federal, state, and local agencies will at long last respect all of the laws of the United States of America, the State of New York, and the Town of Sterling.

- Dr. V. M. Fichera (PhD)

----- Forwarded message -----
From: **Richard Young** <young@geneseo.edu>
Date: Wed, Jul 8, 2015 at 9:54 AM
Subject: Sanford Road-Martville gravel
To: "V. Fichera" <vmfichera@gmail.com>

Dear Dr. Fichera:

I am attaching my comments from my review of the proposed Sanford Road-Martville gravel mining operation. These comments are based on the official documents, maps, and records forwarded to me by yourself. I hope my comments provide a reasonable geologic perspective on the important issues you have raised. I have also attached my updated resume (vita), as the college's online version is several years out of date due to the college's never ending chore of trying to maintain accurate records for our numerous and productive faculty. I hope this format is satisfactory for your needs. It is unfortunate that the citizenry must go to such lengths to ask their leaders and public officials to conform to the laws they were elected or appointed to uphold, as per the timely editorial in today's *Democrat & Chronicle* (as attached).

Sincerely,
Richard A. Young, PhD
Professor Emeritus, Department of Geological Sciences

Richard A. Young, PhD
Department of Geological Sciences (Emeritus)
SUNY Geneseo
1 College Circle
Geneseo, NY 14454

585-245-5296 office

585-243-0087 home

young@geneseo.edu

"TIME IS NATURE'S WAY OF KEEPING EVERYTHING FROM HAPPENING AT ONCE"

Woody Allen

9 ----- Forwarded Message -----

From: **V. Fichera** <vmfichera@gmail.com>

Date: Thu, Jul 9, 2015 at 12:53 PM

Subject: Additional comments by Dr. Fichera, submitted to Dr. Young for his review in his independent geologist report

To: Randy Lawrence <tsterlin@twcny.rr.com>, Lisa Cooper <lcooper2@nycourts.gov>, Isomers2@twcny.rr.com, info@ontarioorchards.com, "Crawford, Margaret A LRB" <Margaret.A.Crawford@usace.army.mil>, "Robinson, Judy A LRB" <Judy.A.Robinson@usace.army.mil>, aaron.c.smith@usace.army.mil, Bridget LRB Brown <bridget.brown@usace.army.mil>, Sandra Doran <Sandra_Doran@fws.gov>, "Niver, Robyn" <Robyn_Niver@fws.gov>

Cc: vfairhav@twcny.rr.com, Jean wilkinson <jwilkinson@rccsd.org>, charles.vandrei@dec.ny.gov, philip.perazio@parks.ny.gov, eparmley@dot.state.ny.us, ccovert@dot.state.ny.us, John Zepko <jzepko@cayugacounty.us>, CCDistrict01@cayugacounty.us

The below email was sent to Dr. Young for his review as an independent geologist. His ratification of my comment submissions is included in his report.

N.B. At the time the below email was composed, I was unaware of the fact that the DEC formally stocks the Sterling Creek with Steelhead trout each year for fishing in the region, and thus the permit application also inaccurately denies in part E.2.q. that any such fishing activities occur -- despite the presence of the Sterling Creek on the very lot which contains the LOM.

Again, the DEC Region 7 mining division did not perform due diligence in the matter of its review of this mining permit application, completely bypassing the staff of the DEC's own natural resources division whose formal opinion of the impact of such a proposed mine on the natural resources implicated by the site was never sought by the mining division during the SEQR review. Such breaches of protocol call into question the validity of the DEC's entire SEQR process in the matter of this and other mining permit applications in Region 7.

Please see the analysis of the "new" Environmental Assessment Form submitted by the applicant, in the email below, included in the materials to which Dr. Young makes reference in his report. For your reference, links to the Town of Sterling / Village of Fair Haven Comprehensive Plan can be found on this official Town of Sterling Website: <http://www.cayugacounty.us/portals/1/sterling/government/laws/index.htm>.

- Dr. V. M. Fichera (PhD)

----- Forwarded message -----

From: **V. Fichera** <vmfichera@gmail.com>

Date: Tue, Jun 16, 2015 at 8:47 AM

Subject: IMPORTANT: Martville Mine permit applicant's updated 2/20/15 EAF misrepresents the compliance of the project with the Town Comprehensive Plan amid multiple other misstatements of fact

To: John Clancy <john.clancy@dec.ny.gov>, david.bimber@dec.ny.gov, charles.vandrei@dec.ny.gov

Cc: kenneth.lynnch@dec.ny.gov, Les Monostory <fishbugm5@twcny.rr.com>

[...]

Yours truly,

Dr. V. M. Fichera (PhD)

Enc. (separately-forwarded) Parts 1 and 2 of the "Town of Sterling / Village of Fair Haven Comprehensive Plan"

Martville Mine EAF submitted by the applicant, dated 2/20/15:

- **B. e.** fails to report the necessary GML 239 review by the Cayuga County Planning Committee
- **C. 2. a and b** misrepresent the fact that town's Comprehensive Plan does indeed include the majority of the proposed mine site in its "Mixed-Use Hamlet Transition Area"
- **C. 4. c and d** incorrectly states Hannibal services and parks (likely from his Harris Hill mining project application)
- **D. 1. e** indicates the applicant intends to begin mining operations in 4/2015 and misrepresents the fact that a site of an upcoming phase had already been clear-cut for excavation
- **D. 1. h.** states that no pond will be created yet the Storm Water Plan clearly refers to a pond for the control of run-off
- **D. 2. a. iv** falsely states that there will be no processing of excavated materials when a screener and crusher are in the moving papers as well as permitted in the Negative Declaration

- **D. 2. b and i through iv** declare no effect on a wetland yet the DEC's own map shows an encroachment and a formal delineation of the wetland was never performed; the Army Corps of Engineers is issuing a warning letter because of the potential for run-off, etc. fill in the national wetland of the Sterling Creek; storm runoff from the approximately 10 acres that had been cut-cleared with grounding of stumps during the application period was not mitigated; the water table level is high in that area and a disturbance could cause sedimentation of the creek, etc.
- **D. 2. c.** falsely states no water use when the Mined Land Use Plan calls for the use of water to control dust, the use of a current well onsite, and no evaluation of the impact of that use on neighboring wells, which is of concern to Sanford Road resident
- **D. 2. d** does not indicate how human liquid, etc. waste will be accommodated at the site which does not appear to have a septic system
- **D. 2. e** misrepresents the land as vegetated when a third of more of the projected LOM has already been clear-cut, the statement about retaining water onsite refers back to misrepresentation of the use of a pond above; affirms the use of barrier materials for run-off yet, on information and belief, none are in use in the clear-cut area near the cliff/slope to the national wetland
- **D. 2. f** conceals the use of crushers and screeners and their impact on air pollution of the area
- **D. 2. g** conceals the fact that the crushers will need permits over 150 tons/hr and no estimates are given of the combined total generation of pollutants from the trucks, excavators, screeners, crusher, etc. despite the fact that the site is across the road from a hamlet
- **D. 2. i** refers only to dust as emissions, concealing the pollutants of the heavy machinery themselves
- **D. 2. j i** misstates the hours of traffic generation as 9 am to 5 pm when the mine would open M-F at 7 am and
- **D. 2. j. ii** appears to under-state the number of semi-trailer trips/day,
- **D. 2. j. iii and iv** ignore the issue of the parking of vehicles belonging to the operators of equipment that will be left onsite,
- **D. 2. j. v.** misstates the adequacy of the hamlet road and of a county road which have no shoulders and do not appear to even meet the commercial 22-foot width recommendations of the American Association of State Highway and Transportation officials [N.B. the inappropriate road structures, sight lines and angles were among the safety and road concerns of the Cayuga County GML 239 Committee which formally voted to recommend the rejection of the permit on May 29, 2015] and
- **D. 2. j. viii** makes no accommodation for the pedestrian use of that hamlet road by Sanford Road residents to access the other residences and businesses of the hamlet
- **D. 2. m. i** admits the sound problem but the noise testing does not substantiate the mitigation statements [applicant was permitted to "cook" the data by spreading out the machinery, omitting the planned crusher, omitting planned idling vehicles, etc.]
- **D. 2. m. ii** overlooks the fact that the wooded barrier is partly seasonal and would therefore not provide sound insulation during winter months
- **D. 2. o** denies that the equipment produces odors, apparently simply because the machinery must meet pollution control standards, as if such standards produced odorless operations
- **D. 2. p** states that the onsite storage of petroleum will be under the permitted amount, yet the hourly truck rate of 5 to 10 vehicles ranging from tri-axes to 18-wheelers indicate that this amount bears inspection for adequacy and therefore, if inadequate, potential violation requiring a permit
- **D. 2. r** denies that there would be the need to bury wood waste even though the DEC has approved in the Negative Declaration the burial of such fill under compacted cover near the cliff/slopes contiguous to the Sterling Creek wetland
- **E. 1. a** intentionally conceals the residential hamlet and its road which the project will share and denies that the project itself lies in a formal "Mixed-Use Hamlet Transition Area" formally delineated in the Town of Sterling / Village of Fair Haven Comprehensive Plan
- **E. 1. b** formally denies the existence of the later-admitted clear-cut of an additional ten acres of forested land which was effectuated in fall 2014 and denies wetland encroachment without having a formal delineation made or even contracted for the formal topographical study required by the Town of Sterling Land Use Rules for any slope activity where the slopes exceed 15%
- **E. 1. g and h** deny the existence of an onsite dump that was noted in the moving papers and documented in the Alliance Archaeological Services Phase I report
- **E. 2 c and f** conceal two additional soil types that will be excavated from 8 to 25% slope inclusions
- **E. 2. h** makes assertion in i concerning the wetland delineation which the DEC map when enlarged itself denies and fails to identify the size of the Federal wetland in iv which it admits is on the site
- **E. 2. m, n, o and p** make wildlife declarations that were never verified with the Fish and Wildlife Service to rule out endangered species, either plant or animal
- **E. 2. q** denies the fact that the neighbors of that area use their adjoining lands for hunting, etc. and that the project will disturb if not destroy such activities
- **E. 3. b** is contradicted by the "Town of Sterling / Village of Fair Haven Comprehensive Plan" soil maps which show that the topsoil on virtually the entire site is valued at one of the highest rates in the entire town (cf. Part II Maps labeled p. 77 "prime farmland" and p. 83 among the highest assessed value of the town)
- **E. 3. f and g** admits the archaeologically sensitive area denied in the earlier submission and elsewhere in the moving papers yet reports no findings even though the entire four Phases areas of the project were never completed -- most likely to conceal the cut-clearing of the Phase IV area
- **E. 3. h** merits further exploration because the distance of the project from formal trails (e.g. inter alia in the vicinity of the Martville and Crocketts hamlets) have, on information and belief, not been verified and the site's distance from, inter alia, the town's nature center and museum and the scenic village and town waterfront areas, as well as the wetlands at Lake Ontario of the Sterling Creek, appear to be within five aerial miles from the site at their southernmost boundaries

10 ----- Forwarded Message -----

From: **V. Fichera** <vmfichera@gmail.com>

Date: Tue, Jul 7, 2015 at 1:48 AM

Subject: Fwd: No response to: Request for a meeting on the Martville Mine Application, Town of Sterling, before any permit is issued

To: daniel.bishop@dec.ny.gov, david.lemon@dec.ny.gov, steven.joule@dec.ny.gov
Cc: Les Monostory <fishbugm5@twcnny.rr.com>, william hecht <wshecht01@gmail.com>, jim.petreszyn@madisoncounty.ny.gov

Dear DEC Region 7 Natural Resources Supervisor Daniel Bishop,

Please review with your team at your earliest convenience the materials I have sent you last week per our discussion. There is some urgency in this matter (see email forwarded below).

I will soon have geologist Professor Richard Young's comments on the MLUP, etc. which reveal groundwater issues, etc. Now the mining permit applicant plans on altering his mining plan, eliminating certain phases and areas within the LOM which will dramatically affect the nature of the reclamation (all puns intended) because the resultant land structure will be very different topographically from what was originally proposed -- all of which should trigger an entirely new SEQR review for the altered MLUP he plans to submit only to the Town Planning Board.

It is nothing short of scandalous that the natural resources division was never contacted in the SEQR process for a proposed mine adjoining a national wetland, the Sterling Creek, and a principal aquifer. I ask that you please consider contacting Director Lynch directly to formally request that no permit be issued until your division reviews all of the files and informs the Director of your evaluation of the conclusions of the mining division, conclusions fabricated with no input from DEC or any other natural resources experts..

- Dr. V. M. Fichera (PhD)

11 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Mon, Jul 6, 2015 at 11:32 PM

Subject: No response to: Request for a meeting on the Martville Mine Application, Town of Sterling, before any permit is issued

To: "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>

Cc: Les Monostory <fishbugm5@twcnny.rr.com>, william hecht <wshecht01@gmail.com>

Dear DEC Region 7 Director Lynch:

As you know from my and Les Monostory's email correspondence, we are asking that a permit not be issued to the applicant for the Martville Mine at the very least until we have first had the opportunity to meet with you in person at your office. Mr. William Hecht has also asked to be part of that meeting. As of this writing, we have not heard back with any proposed date and time. I must renew the urgency of this request in no small part because of representations made to the Town of Sterling Planning Board this evening, July 6, 2015, concerning the DEC mining division's actions in this matter.

The mine applicant stated that he had a phone conversation with the Permit Administrator on Friday, July 3, 2015, during which he was assured that the DEC's response to comments had already been drafted and that when the response went out the week of July 6, 2015, he would simultaneously receive his permit.

Further, at the Town Planning Board meeting, the permit applicant described major alterations to his mining plan, including but not limited to changes in the mining area sequences, location of haulage roads and entrances/exits, in response to Town of Sterling Land Use Regulations that, inter alia, he may not conduct any sand, gravel or excavation operations (which he erroneously interprets to mean "excavation") within 1000 feet of a structure. The Town Planning Board has advised him to revise his maps, narratives, and Site Plan for their review, yet the applicant has informed the Planning Board that he has no need to submit any of these changes to the DEC. He has twice declared that the DEC doesn't require him to follow the Army Corps of Engineer representative's advice to not bury fill on the slope to a national wetland -- but he generously stated that it made sense to keep it on the top of the land there, even as he bragged that the DEC had reviewed and approved his original plan.

The DEC has been apprised of major, endemic misrepresentations in the permit application yet the Permit Administrator has essentially declared in writing in an email upon which you were openly cc'ed that he prefers to grant permits in the matter of potentially fraudulent applications by working with mining operators -- to essentially "handle" the voiced concerns of the public. I note, more than in passing, that the DEC intentionally fails to post SEQR materials for public comment -- lest the public actually comment, apparently. Those of us who made the trip to your Division's headquarters have documented in writing the dizzying irregularities in these multiple Negative Declarations. Ironically, the Cayuga County Planning Board's GML 239 Committee's Website posted many of the materials the mining division seeks to conceal by deliberately not posting them on the DEC Website.

Indeed, the DEC Region 7 does not even bother to respect the basic protocols of SEQR review: In the matter of the Martville mine, the DEC failed to consult with the NYS Department of Transportation until May 4, 2015 -- after it had already granted a formal Negative Declaration that very day. A representative of the DOT revealed his dismay in a July 6, 2015 email to the Town Planning Board Chair that the DEC as Lead Agency in the SEQR process had excluded the DOT. The Hannibal Harris Hill Road mining permit was granted by the DEC with both the applicant and the DEC failing to consult with the Parks Division about sensitive archeological areas that require further study, falsely certifying on all forms that there are no such areas. And on and on and on.

It appears that there is literally everything that the DEC Region 7 mining division won't do (won't contact Parks, won't contact DOT, won't require a permit for a DEC registered wetland, etc.) in order to grant mining permits to applicants who misrepresent the facts and circumstances of their operations. Indeed, I was informed last week by the archeologist who conducted studies of parts of the proposed Martville mine LOM that she warned the operator in the fall of 2014 not to disturb the Phase 2 area near the Sterling Creek until she had been engaged to perform the archeological study; when she returned in the spring of 2015, she saw that she had been ignored and the land had been grubbed. No matter, of course, as the permit applicant told the Town of Sterling Planning Board on more than one occasion, he has been informed by the DEC 7 Permit Administrator that he will have his permit -- and most recently he appears to have been informed that he will have his permit this week. And, I would add: once he has it, why should he bother to respect its limitations and expectations when he was not even held accountable for the truth and accuracy of his permit application. Why indeed? No natural resources staff of Region 7 were contacted in the SEQR review, either, of course -- lest any inconvenient truths about dangers to the water quality or the stocked trout of the Sterling Creek get in the way of the mining division's granting of a permit.

Within the next few days, I will be receiving an emailed review of several of the Martville mine DEC permit application documents by a noted geologist, Professor Richard Young, PhD, who was one of the geologists who developed the USGS NYS Finger Lakes Surficial Maps (cf. <https://www.geneseo.edu/geology/young>). In a discussion of his forthcoming comments, he raised multiple concerns about the project and its environmental effects which will be brought to your attention as soon as I receive his emailed comments within the next few days.

In closing, multiple irregularities continue to characterize the DEC Region 7's review of mining permit applications, and a pattern of practice is beginning to emerge. The mining division reports, I understand, directly to your office, and therefore you are, it appears, both immediately and ultimately responsible for their actions.

Please arrange for us to meet before the DEC Region 7 grants yet another irregular permit to yet another highly problematic mining project.

Yours truly,

Dr. V. M. Fichera (PhD)

----- Forwarded message -----

From: <fishbugm5@twcny.rr.com>
Date: Thu, Jun 25, 2015 at 8:37 PM
Subject: Request for a meeting on the Martville Mine Application, Town of Sterling
To: kenneth.lynch@dec.ny.gov
Cc: vmfichera@gmail.com

Ken Lynch,

Dr. Virginia Fichera has asked for a meeting with you on the Martville Mine Application, and has asked me to join her at the meeting as someone familiar with SEQR and wetland regulations. The NYSDEC is apparently preparing a response to formal comments submitted by Dr. Fichera. Her main concern is that a mining permit or revised negative declaration not be declared prematurely regarding the mine application.

Sincerely, Les Monostory

12 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>
Date: Wed, Jun 24, 2015 at 8:35 AM
Subject: The status of DOT May 29, 2015 9:21:46 AM email to the DEC in the matter of the traffic impacts of the proposed Sanford Road Martville Mine operation
To: eparmley@dot.state.ny.us
Cc: ccover@dot.state.ny.us, Isomers2@twcny.rr.com, kevincox@camardo.com, CCDistrict01@cayugacounty.us, John Zepko <jzepko@cayugacounty.us>, John Clancy <john.clancy@dec.ny.gov>, ssmaldon@nysenate.com, "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>

Dear Ms. Parmley:

The DEC, as Lead Agency in the SEQR evaluation of the above-named DEC mining permit application, sought the comments of the NYS Department of Transportation concerning the complex intersections which will be impacted by the proposed Martville mine; your above-referenced email communication (cf. attached scan) was apparently in response to a request of the DEC which was sent to you, I believe I was told, around May 2, 2015.

The Cayuga County GML-239 Committee, for reasons which included concerns for safety at the intersections of Route 38 and Route 104 as well as of the intersections involving Route 38, Pople Road, and Sanford Road, voted to formally recommend to the Town of Sterling that the Special

Use Permit application for the mine be rejected by the Town, coincidentally on the same day as your email to the DEC contact person, John Clancy (cf. http://www.cayugacounty.us/Portals/0/planning/239/MINUTES_May292015_DRAFT.pdf). It is my understanding that all of these concerns correspond to requirements for review in the SEQR process as well.

At the Town of Sterling Planning Board meeting yesterday, June 23, 2015, the applicant represented to the board that a meeting took place onsite at 13181 Sanford Road with DEC mining staff, an Army Corps of Engineers representative, one or more Town officials (including Planning Board member/s), as well as the applicant and his attorney on June 12, 2015. It was communicated to and by the board in open meeting that the DOT was invited to that onsite meeting but that no DOT representative took part. Can you confirm that the DOT received an invitation and provide a copy of it?

The applicant further communicated to the board what appears to be his understanding from recent discussions with DEC mining staff: that the DEC has nothing to do with the DOT; that the DOT's requests and requirements are not a part of DEC requirements for the issuing of a mining permit; that the DEC may issue a mining permit without first ensuring that the DOT's requests and requirements are being met or making them a condition of such permit; that, in effect, he, the applicant is free to ignore the requests made by the DOT in your emailed communication, with no effect on his DEC permit application. The applicant further indicated that the DEC communicated to him recently that none of the comments received by the mining division during the official comment period which ended on June 5, 2015 were worthy of any concern or response by the applicant. The DOT's comments, as well as the comments of residents and the Cayuga County GML-239 Committee are comments received by the DOT during that period.

I am concerned that the applicant's expressed understandings may not conform to the actual legal expectations of the regulations of either or both state agencies. However, inasmuch as there are so many errors of fact in the moving papers and so much hearsay involved in the communications concerning this permit application as well as the same applicant's permit application for a Hannibal Harris Hill Road mine, that I am writing to the DOT, an involved agency, to be informed of the actual status of the content of the above-referenced and attached email from yourself to the DEC mining staff contact person.

Does the DOT have the power to enforce its request to the DEC to receive and review accident and traffic gap analyses at the referenced intersections? Does the DOT have the power to require the studies and the shoulder construction, as communicated in the email? What is the formal role of the DOT as an involved agency in this and any SEQR review? Please communicate to me the specific regulations or other authority for your emailed requests/requirements to the DEC because the applicant and the Town Planning Board expressed sentiments that the highways in question are open to the public and that the DEC and the applicant may indeed be free to essentially ignore your email communication.

In closing, please realize that I am only reporting the direction and tenor of the discussion between the applicant and the Town of Sterling Planning Board at that meeting on June 23, 2015; no action was taken at that meeting concerning the application for the Town's Special Use Permit. There was no representative of the DEC present nor do I know of the existence of any formal communication responding to your email at this time. Therefore, please inform me as to what was the original request made to the DOT by the DEC, what, if any, further correspondence or reports in this matter have been communicated to the DOT, and what, if any, DOT communications in this matter have been further communicated to the parties. Emailed copies of these correspondence, reports, relevant URLs, etc. are requested so that I may review and understand the official record in this confusing matter.

If these requests should be communicated to another member of the DOT staff, please provide me with the name and contact information for that person or persons by forwarding this communication to him/her/them with cc to me and Senator Nozzolio's staff.

Thank you for your anticipated assistance in the matter of our mutual concern for safety on the roads and highways of the State of New York.

Yours truly,

Dr. V. M. Fichera

13 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Mon, Jun 29, 2015 at 6:14 PM

Subject: Re: [EXTERNAL] Clarifications needed: 13181 Sanford Road, Martville NY Army Corps site visit (UNCLASSIFIED)

To: "Crawford, Margaret A LRB" <Margaret.A.Crawford@usace.army.mil>

Cc: "Robinson, Judy A LRB" <Judy.A.Robinson@usace.army.mil>, "Niver, Robyn" <Robyn_Niver@fws.gov>, Sandra Doran <Sandra_Doran@fws.gov>, "Brown, Bridget LRB" <Bridget.Brown@usace.army.mil>, aaron.c.smith@usace.army.mil

Dear Ms. Crawford,

Thank you for your preliminary response to my email communications.

You will recall that I have asked specifically for the location of the wetlands which your reply below does not provide. Simply stating that they are outside the proposed perimeter of the mine does not let the public know whether the wetland plants rise onto the slopes, for example, how near they are to the slope, etc. The water quality of the Sterling Creek, as well, appears to be off the radar screen of the Army Corps.

Your reply has not addressed the issue of the effects of the clear-cut land inside the LOM perimeter above the slope to the wetland. As I indicated to you, I have been informed by foresters that such clear-cutting and removal of stumps, etc. last summer and fall could have led to fill in the wetland and even the creek from the heavy snows and rains we have suffered since those events. Amazingly, I have not heard you address the actual location of the wetlands at all let alone whether there is any fill in them at this time -- in fact, as I reported to you, the applicant claims there are no wetlands there at all, which the maps of the DEC and the NFWS, however, do delineate.

Please inform me what, if any written reports you have made of this site visit, at which you apparently verbally communicated to the applicant that the DEC's permitted bury of fill on the slopes would be unacceptable, and apparently also reassuring the applicant that there are no concerns about the Sterling Creek or its wetland -- because, he alleges, you told him there is no wetland there.

In other words, your response to me does not address the majority of the issues I raised in the communications. If these issues are addressed in a report, please inform me of the title and date of such report/s so that I may make the appropriate request through FOIA to read them.

Your response also does not address possible or actual violation of the wetland by fill run-off. Did you actually inspect the wetlands and the Sterling Creek at the site themselves? Your report seems to indicate that all you did was walk the perimeter of the proposed mine up on the cliff, about twenty feet away from the slope to the wetland. It was my understanding that the applicant had received a warning letter sent by Ms. Robinson and neither of you have addressed the status of that warning which, I recall, was to advise the applicant to engage a professional delineation of the wetland. Please provide me with the date of that warning letter so that I may also arrange to receive an electronic copy of it under FOIA. The applicant does not apparently consider himself to be warned about anything, even as his clear-cutting activities were in the context no storm water control precautions last year. The applicant may be assuming that there is no wetland for him to bother to protect -- he was very firm that "Maggie" said he had nothing to worry about at all because "there is no wetland there."

As things stand, I allege that there may be run-off fill on the slopes -- parts of which may have wetland plants and constitute wetland rather than "buffer" -- and the lower wetland as well. And there may in the future also be fill on the slopes burying wetland plants and encroaching into the wetland. I have not been assured that the Army Corps is performing due diligence to be able to prosecute such violations either now or in the future because your message does not actually respond to my complaints and concerns.

I look forward to receiving answers to all of my questions in these matters -- and to evidence that the Corps' took seriously my complaint about possible fill in the wetlands and the Sterling Creek below the site of the clear-cutting and logging -- again, activities performed the preceding summer and fall without any of the applicable storm water protection procedures to which the applicant verbally engaged himself throughout the application.

Therefore, I look forward to your completed response. As you know, the Army Corps was indeed invited by the DEC to inspect the site, therefore there was no impediment to the Corps' performing due diligence in the matter of my formal complaints -- complaints which did _not_ limit themselves to the mere perimeter of the proposed Life of Mine.

Yours truly,
Dr. V. M. Fichera (PhD)

On Mon, Jun 29, 2015 at 2:39 PM, Crawford, Margaret A LRB <Margaret.A.Crawford@usace.army.mil> wrote:
Classification: UNCLASSIFIED
Caveats: NONE

Hi Dr. Fichera,
I conducted a site inspection on June 12, 2015, with the applicant, his consultant, members of the NYSDEC Regional Offices, and local representatives. We walked the perimeter of the proposed mine. We found that the wetlands are located outside of the proposed limits of mine. Due to some concerns associated with the grades, the applicant modified the plan to reduce the encroachment into the slopes that go down to the wetland.

Under Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers regulates the discharge of dredged or fill material into waters of the United States, including freshwater wetlands. When there is no discharge of dredged or fill material into the wetland, the Corps has no involvement over the project. The Corps has no authority over buffers to wetlands.

If you would like copies of information from the file, you will have to request those through the Freedom of Information Act. Our procedures can be found at: <http://www.usace.army.mil/FOIA.aspx>

I hope that this helps to answer your questions.

Thank you,
Maggie Crawford

-----Original Message-----
From: V. Fichera [mailto:vmfichera@gmail.com]
Sent: Wednesday, June 24, 2015 4:57 PM
To: Crawford, Margaret A LRB

Cc: Robinson, Judy A LRB; Niver, Robyn; Sandra Doran; bridget.brown@asace.army.mil
Subject: Re: [EXTERNAL] Clarifications needed: 13181 Sanford Road, Martville NY Army Corps site visit (UNCLASSIFIED)

Dear Ms. Crawford:

Thank you for your reply.

Unfortunately I and the NFWS members I have been in contact with would clearly best benefit from your addressing in writing the issues I have raised. Please cc your response to all of those whose email addresses appear in the header above.

I am concerned about the fish aquatic life in the Sterling Creek and the health of its waters, as well as the wildlife which inhabits the woods and trees, including possible bald eagle and Indiana bat nestings. In fact, I am also waiting for a FWS biologist to be assigned to this complaint as I requested as well as well. The concerns about the wetland are concerns which affect the fish and wildlife but also the larger wetland into which the Creek flows at Lake Ontario.

Further, the Creek at the location of the mine is adjacent to a major town aquifer. Therefore I am very concerned that the DEC has not addressed any issues concerning the quality of the water which might be affected by pollutants used at the mine, including but not limited to petroleum storage onsite that will not be subject to permitting simply because the applicant promises never to have more than 1100 gallons on site at any one time. Given the fact that the DEC was officially permitting the burial of fill on the slope to what I feel sure from the NFW and DEC maps is a national wetland -- something I alone first identified and which I understand you did address during your onsite visit -- I believe that a warning letter was and is still appropriate. Please confirm its existence and provide me with copies of the letter and all reports in this matter.

I would also ask that, if possible, the Federally-protected waters of the Sterling Creek be tested near the site to document any current contamination of the bed, etc. and so that it will be easier to identify additional foreign contaminants down the line. Residents of the area are concerned about the road treatments and possibly synthetic dust treatments that may pollute the water as well as the air pollutants from machinery which will settle onto the waters -- in an area which may become a high risk for a petroleum spill from the mining traffic and the fueling activities.

From the many errors of fact, contradictions, and omissions in the applicant's moving papers submitted for the mining permit through the SEQOR process, I believe that it is also important to document the current state of affairs with respect to water quality and the possible presence of endangered species onsite. The applicant represented in the EAF and the Mined Land Use Plan that the entire site was wooded with the exception of two acres, promising to exercise storm water control practices, etc. -- knowing full well all along that about ten acres of the archaeologically sensitive site had already been cleared. The logging occurred in two phases last year, once in the summer and once around September 2014, as the applicant admitted to me yesterday evening in conversation. Thus it is not clear that the habitat of, for example, the Indiana bat was not endangered, because of the timing of the clear-cutting.

Given all of the problematic facts and circumstances of this permit application, I do not feel comfortable "trusting" that the measures instituted by the DEC will adequately protect the wetland and the Sterling Creek and therefore I am most eager to have the Army Corps and/or the FWS at least document the current status quo -- because, sadly, it is actually possible that your visit was too late to save parts of the wetland from fill according to the likely scenario I described. The manner in which your visit was characterized was, I hope, contrary to the facts of the situation -- I await enlightenment thereon.

I will look forward to reading your response which will also help inform my further contact with NFWS, as well. I am aware that there are jurisdictional requirements that must be met; I am asking you to do all that you can to protect the wetland, the stream, and the wildlife from the massive assault on their integrity which are the likely outcomes of the DEC's lax standards for the granting of mining permits.

Thank you for your anticipated attention to these matters.

Yours truly,

Dr. V. M. Fichera (PhD)

On Wed, Jun 24, 2015 at 3:08 PM, Crawford, Margaret A LRB <Margaret.A.Crawford@usace.army.mil> wrote:

Classification: UNCLASSIFIED

Caveats: NONE

Hi Dr. Fichera,

Thank you for your e-mail. I think that it would be easier to discuss this with you over the phone. Can you provide me with your phone number, or call me at the number below? I will be in our Buffalo office for the next couple of days. I will be at my desk until approximately 4pm today. Otherwise, I will be back in the office on Monday.

Thank you,

Maggie

Margaret Crawford, Biologist
U.S. Army Corps of Engineers, Buffalo District
Regulatory Branch, Auburn Field Office
7413 County House Road
Auburn, New York 13021
[315/704-0256](tel:3157040256) <tel:315%2F704-0256>
margaret.a.crawford@usace.army.mil
<http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>

-----Original Message-----

From: Robinson, Judy A LRB
Sent: Wednesday, June 24, 2015 2:50 PM
To: Crawford, Margaret A LRB
Subject: FW: [EXTERNAL] Clarifications needed: 13181 Sanford Road, Martville
NY Army Corps site visit (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

FYI

Judy A. Robinson, MS
Biologist
U.S. Army Corps of Engineers
Auburn Field Office
7413 County House Road
Auburn, New York 13021
judy.a.robinson@usace.army.mil

Buffalo District website: <http://www.lrb.usace.army.mil>
Regulatory Website <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>

[315-704-0255](tel:3157040255) (Phone)
[315-255-1492](tel:3152551492) (FAX)

-----Original Message-----

From: V. Fichera [<mailto:vmfichera@gmail.com>]
Sent: Wednesday, June 24, 2015 2:03 AM
To: Robinson, Judy A LRB
Cc: Niver, Robyn; Sandra Doran
Subject: [EXTERNAL] Clarifications needed: 13181 Sanford Road, Martville NY
Army Corps site visit

Dear Army Corps Member Ms. Judy Robinson:

On June 4, 2015, you phoned me to tell me that Mr. Christopher Ferlito would be receiving a warning letter from the Army Corps and that he would be advised to delineate the wetland on his property and that there would be penalties if there were any fill in regulated waters.

On June 23, 2015, at a meeting of the Town of Sterling Planning Board, Mr. Ferlito asserted that on June 12, 2015, a member of the Army Corps named "Maggie" accompanied several DEC mining staff as well as Mr. Ferlito, his attorney and one or more Town officials to the LOM site. Mr. Ferlito related that "Maggie" said there is no Federal wetland there on the Sterling Creek -- contrary to the maps available from the National Fish and Wildlife Service and the DEC, as well, which so indicate. I asked if there had been a formal delineation and apparently, contrary to what you stated the letter would say, "Maggie" reportedly said no delineation is necessary. Apparently, "Maggie" effectively rescinded the warning letter (if it has indeed been sent).

She did note that part of the questionable practices that the DEC had blessed with a "Negative Determination" (and what I was the first and only person to have complained of to both the DEC and the Corps) was indeed problematic: namely the authorization to bury fill on the slope into the waters of the Sterling Creek -- now declared by "Maggie" (according to Mr. Ferlito) to have no wetland.

Has the wetland been buried with fill, one wonders, so that the damage was done already? How would "Maggie" document or determine that? Does the Army Corps actually care?

I learned from Mr. Ferlito that the land above this slope was cleared in part by the previous owner in summer 2014 and then Mr. Ferlito cleared the remainder of that section in fall 2014 -- stump grinding and all -- no concern for the Indiana myotis bat, apparently, no concern for the misrepresentations of that site (deemed archeologically "sensitive" on the state register) as "wooded" throughout the permit application. No need to be concerned about fill in the Sterling Creek from heavy snows and heavy rains this spring and summer because, with no before and after photos, "Maggie", said he, declared there is no fill in the Sterling Creek.

Unfortunately, the number of inaccurate statements in Mr. Ferlito's permit application to the DEC required fifteen pages to begin to delineate in my comments alone, so I cannot be sure of the veracity of anything he reported. The applicant and the DEC made no evaluation of the possible effects on neighboring wells of using a well on the property for major operations at the mining site, for example -- even though one resident reported a well drying up three years ago with no mining operation present. If I appear to digress, consider this: the DEC didn't notice that one of its own registered wetlands was "missing" on the Hannibal Harris Hill Road mine permit application to which it had given its usual rubber-stamp "Negative Declaration. A resident, just like me, discovered the "missing" wetland in the moving papers and cried foul. Therefore I am writing to you for clarification: Has a member of the Army Corps also "missed" a Federal wetland?

I will want a copy of the "warning letter" that was reportedly being sent to Mr. Ferlito and I will want to see the full report of the visit of "Maggie" to 13181 Sanford Road in Martville. Did "Maggie" actually visit the cleared area of the site at the top of the steep slope? And what is her documented basis for declaring there is no wetland on the Sterling Creek in that vicinity? I can see the wetland flora from the road as it heads in the direction of that slope.

I will need full documentation of these startling reassurances given to Mr. Ferlito and the DEC which contradict the NFWS maps and information to the public. It is difficult for the NFWS to help protect the fish and turtles, etc. in the stream if the Army Corps declares wetlands to be non-existent without formal delineation. Again, I say "if" because, of course, this is Mr. Ferlito's version of the story.

I left you a voicemail earlier in the day on June 23, 2015 about my concerns for fill because a certified forester had informed me that, in general, land of the size of ten acres on a slanted steep slope can indeed produce run-off, generally for the first year until heavier vegetation can set in. I am not asking the Army Corps to regulate run-off -- I am asking it to actually care about fill and/or the potential for fill in what I am sure are regulated waters, Mr. Ferlito and his perhaps fictitious "Maggie" notwithstanding.

Thank you for your anticipated assistance in addressing all of the above issues. I look forward to your reply.

Yours truly,

Dr. V. M. Fichera (PhD)

cc: Ms. Sandra Doran, Dr. Robyn Niver (NFWS)

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

14----- Forwarded message -----

From: **V. Fichera** <vmfichera@gmail.com>

Date: Sun, Jul 5, 2015 at 12:50 PM

Subject: FOIA request for inspection access of records generated by and/or on file with USACE staff of the Auburn Field Office re: Sterling Creek and wetlands

To: foia-lrb@usace.army.mil

Dear FOIA Officer for the Auburn Field Office of the Buffalo District of the USACE:

This is a request under the Freedom of Information Act (5 U.S.C. § 552).

I request inspection access, with a view to selecting and receiving electronic copies of, any and all records relating to the proposed Sanford Road Martville mine, its DEC permit application, and any documents generated and or on file involving any and all staff of the Army Corps of Engineers relative to the DEC permit application, a USACE onsite visit, my complaint concerning suspected fill in the national wetlands adjacent to (or potentially affected by) the proposed Life-of-Mine, as well as in the Sterling Creek, nationally protected waters.

It is my understanding that the entirety of the USACE involvement, contacts, reports, and documents are all within the Buffalo District, specifically with the Auburn Field Office. I wish to come onsite to the Auburn Field Office with an assistant to inspect the records during normal business hours.

In order to help you determine my status for the purpose of later assessing fees, you should know that I am both

☒ affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for a commercial use, and

☒ an individual seeking information for personal use and not for a commercial use.

I am willing to pay any appropriate fees for this request upon prior notification of an estimated amount, but only in the event that the records selected after onsite inspection cannot be scanned and emailed to me at the email address above.

I also include a telephone number at which I can be contacted if necessary to discuss any aspect of my request; however, email is the preferred method of communication inasmuch as I am difficult to reach by phone. Therefore, please email me first with any questions or concerns you may have with this request as well as the proposed dates and time frame for onsite inspection in Auburn.

Thank you for your anticipated assistance with this FOIA request.

Sincerely,

Dr. V. M. Fichera (PhD)
P.O. Box 44
Sterling, NY 13156
315 three nine one 5678
Adjunct Professor, Binghamton University-SUNY

Exhibit E

Independent Expert Geologist Review

by

Dr. Richard A. Young (PhD)

From: **V. Fichera** <vmfichera@gmail.com>

Date: Wed, Jul 8, 2015 at 10:54 AM

Subject: **Independent expert geologist's report on the Sanford Road-Martville mine DEC and Town of Sterling mining permit application**

To: "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>, "Bimber, David L (DEC)" <david.bimber@dec.ny.gov>, John Clancy <john.clancy@dec.ny.gov>, "McGinn, Barbara A (DEC)" <barbara.mcgin@dec.ny.gov>, "Lucidi, Christopher M (DEC)" <christopher.lucidi@dec.ny.gov>, "Spadafore, Michael S (DEC)" <michael.spadafore@dec.ny.gov>, "Tracy, Elizabeth A (DEC)" <elizabeth.tracy@dec.ny.gov>, Randy Lawrence <tsterlin@twcny.rr.com>, Lisa Cooper <lcooper2@nycourts.gov>, Isomers2@twcny.rr.com, info@ontarioorchards.com, "Crawford, Margaret A LRB" <Margaret.A.Crawford@usace.army.mil>, "Robinson, Judy A LRB" <Judy.A.Robinson@usace.army.mil>, aaron.c.smith@usace.army.mil, Bridget LRB Brown <bridget.brown@usace.army.mil>, Sandra Doran <Sandra_Doran@fws.gov>, "Niver, Robyn" <Robyn_Niver@fws.gov>
Cc: daniel.bishop@dec.ny.gov, david.lemon@dec.ny.gov, steven.joule@dec.ny.gov, charles.vandrei@dec.ny.gov, philip.perazio@parks.ny.gov, eparmley@dot.state.ny.us, ccovert@dot.state.ny.us, John Zepko <jzepko@cayugacounty.us>, CCDistrict01@cayugacounty.us, Jean wilkinson <jwilkinson@rccsd.org>, vfairhav@twcny.rr.com, Richard Young <young@geneseo.edu>

Please see the below email just received from Dr. Richard Young with his geologist report and recommendations, together with its appended materials, also sent by him, in the forwarded attachments.

Dr. Richard Young is Distinguished Service Professor Emeritus of Geological Sciences at SUNY-Geneseo. He was one of the authors of the USGS NYS Finger Lakes Surficial Map and has served as an expert consultant on myriad geology, hydrology, etc. projects throughout his career. He attached his resume as well as his report, and also appended a July 8, 2015 *Democrat and Chronicle* editorial on open government.

Please note that the documents submitted to Dr. Young for his review included all those publicly posted on the Cayuga County GML-239 Committee's Website preceding their formal vote to the Town of Sterling recommending that the Town government reject the mining application for multiple inter-municipal safety and highway issues. These documents, publicly posted on the Internet by that committee were supplemented by electronic documents provided to me by the DEC subsequent to my visit to the Syracuse Region 7 headquarters during the official comment period on the pre-mature Negative Declaration, as well as copies or links to the Town of Sterling Land Use Regulations and the Town of Sterling / Village of Fair Haven Comprehensive Plan, formally adopted in 2010 and made part of the Town of Sterling Land Use Regulations in 2014.

These documents are hereby formally submitted to the DEC, the Army Corps of Engineers, the National Fish and Wildlife Service and all of the members of the Town of Sterling government, prior to the announcement of any final decisions on the Sanford

Road Martville Mine DEC mining permit and Town of Sterling Special Use Permit application in this matter.

This information and its important recommendations are submitted in the hope that all Federal, state, and local agencies will at long last respect all of the laws of the United States of America, the State of New York, and the Town of Sterling.

- Dr. V. M. Fichera (PhD)

----- Forwarded message -----

From: **Richard Young** <young@geneseo.edu>

Date: Wed, Jul 8, 2015 at 9:54 AM

Subject: Sanford Road-Martville gravel

To: "V. Fichera" <vmfichera@gmail.com>

Dear Dr. Fichera:

I am attaching my comments from my review of the proposed Sanford Road-Martville gravel mining operation.

These comments are based on the official documents, maps, and records forwarded to me by yourself.

I hope my comments provide a reasonable geologic perspective on the important issues you have raised.

I have also attached my updated resume (vita), as the college's online version is several years out of date due to the college's never ending chore of trying to maintain accurate records for our numerous and productive faculty.

I hope this format is satisfactory for your needs. It is unfortunate that the citizenry must go to such lengths to ask their leaders and public officials to conform to the laws they were elected or appointed to uphold, as per the timely editorial in today's Democrat & Chronicle (as attached).

Sincerely,

Richard A. Young, PhD

Professor Emeritus, Department of Geological Sciences

--

Richard A. Young, PhD
Department of Geological Sciences (Emeritus)

SUNY Geneseo

1 College Circle

Geneseo, NY 14454

585-245-5296 office

585-243-0087 home

young@geneseo.edu

"TIME IS NATURE'S WAY OF KEEPING EVERYTHING FROM HAPPENING AT ONCE"

Woody Allen

Richard A Young, PhD
Distinguished Service Professor Emeritus of Geological Sciences

Re: Sanford Road Martville gravel mining issues

July 8, 2015

Dear Dr. Fichera:

In response to your concerns about the potential effects of the proposed Sanford Road Martville gravel mining operation on the water table and local wells, and on the possible erosion and siltation/sedimentation from the steep slope adjoining a national wetland and the Sterling Creek (itself adjoining a principal aquifer), I have read most of the materials you sent (Mined Land Use Plan, Storm Water Control Plan, EAF, your formal Comments to the NYSDEC, etc.).

You have done an excellent job of compiling the weaknesses, omissions, and faults with the applications and associated documents and I share your concerns about the water table and erosion of the steep slope adjoining those sensitive environmental areas.

The shallow groundwater table is extrapolated from a single well that is not in the area to be excavated. There is no accurate way to construct an accurate site-wide groundwater gradient (as extrapolated in the cross-section profile provided by the permit applicant) from such meager and deficient data, especially beneath such irregular topography (water tables usually tend to mirror the topography to some degree).

There might be lenses of coarser and finer-grained glacial materials that would affect the actual shape of the groundwater table (and/or the presence of perched water), as well as the topography itself. Without a true contour (3-D) map of the existing (pre-excavation) groundwater surface, it is not possible to show beforehand what the actual limits of excavation should be if, "a minimum of five feet of undisturbed material will be maintained above the seasonal high groundwater elevation." The only general statement that might be made is that the local water table is ultimately graded to the elevation of Sterling Creek, and will not fall below that level, should the excavation go that deep. If deeper than the Creek elevation, the pit could fill with groundwater. A pond might also be formed at some other level if sand and gravel deposits are inter-bedded with finer silts or clays (perched water table condition). These are currently unknown possibilities.

Whenever such sand and gravel excavations occur, the very fact that overburden materials are removed changes the groundwater table (creates a new, lower, water table), and there is no assured way of accurately determining where the original seasonal high groundwater table was after the fact (in most cases). This could only be done accurately with pre-excavation borings throughout the site. Only then could a calculation be made of what the limits of excavation should actually be (based on this problematic "requirement"). This requirement is a problem with all such excavations that presume to maintain undisturbed material above the original groundwater table. The regulation itself is problematic, because any excavation changes the original conditions and reconfigures the water table.

Furthermore, there is the unusual complication that arises from the DEC Region 7 mining division's reporting structure, which apparently does not require it to report or consult with the natural resources division. The mining division might later grant the applicant a variance to mine below the water table, which would further compromise the area. This reporting structure is apparently unique among the nine DEC Regions, where all other mining divisions apparently report to the natural resources division.

An additional environmental concern relating to changes in the water table involves the potential effects on local private water wells. Because such sand and gravel excavations tend to lower the area water table over time, they can have a corresponding impact on water levels in local residential wells. It is unclear to me how many local wells are close to the site and might be impacted. It would be important to know the water levels in residential wells surrounding the site to draw conclusions concerning this potential impact. I would recommend a local water well survey prior to the project's inception to avoid controversy in the future. Such a survey should include both high water and low water conditions during the different seasons, as well as basic water quality.

The description of dust issues is patently ridiculous. I have never worked around any sand and gravel operation that did not generate dust under some condition (such as drought conditions or a few dry and windy days). Water trucks are never in continuous operation on a site-wide basis in any such operation I am familiar with. Generally such excavations have erratic schedules depending on demand for the resource. This means there are varying times, including weekends, when dust is not and cannot be realistically controlled.

The comments concerning soil types, while valid and perhaps required in such applications, are essentially meaningless. "Soil" refers only to the top few inches to a couple of feet of material (in this glacially modified climatic zone), and the soil descriptions indicate little about the types of glacial deposits or glacial environments that created the deposits in question, when the last ice sheet was melting and receding.

Much of the area surrounding Sterling Creek (including the LOM of the mine east of North Victory) has actually been mapped as consisting of glacial lake sediments "lsc" or lacustrine silt and clay, which are generally fine-grained (Reference: Finger Lakes Sheet of NYS surficial geology map at http://ngmdb.usgs.gov/Prodesc/proddesc_19735.htm, which I took part in creating), but scattered pockets of coarser glacial outwash deposits occur across the region. Without the more detailed geological/topographic field studies referred to above, however, it is not possible to know just what is the nature and overall extent of the "gravel" below the topsoil. The Comprehensive Plan for Sterling has maps on pages 76, 77, and 83 that reflect this geology as well, and refer to what appears to be most of the Life-of-Mine area as prime farmland, assessed at some of the highest 2009 values in the entire Town of Sterling.

All of this gives rise to concerns for possible groundwater fluctuations and contamination of water supplying nearby residential wells, and for the ultimate integrity of the steep slopes (both natural and created) with respect to erosion and siltation/sedimentation of the wetland and Sterling Creek from wind/water erosion, clearing, and mining operations. It should be noted that the diagrams submitted call for the intentional creation of a 2 to 1 steep slope on the mining side of the existing steep slope, with vegetation to be reestablished on the resultant floor during reclamation, but only after the close of that mining phase, which could be several years or even two decades later. This creation of a double-sided steep-sloped land structure or berm bears further analysis as to its stability and impact on the local hydrology.

Additionally, proposed alterations of the mining areas and phases, and abandoning some phase areas within the LOM in order to conform to local ordinance requirements, will likely affect how the reclamation is able to be conducted, as well. The resultant land structure and topography may ultimately be very different from what has been represented in the application, and may persist for years if not the proposed twenty-year duration; this would require further analysis as well.

I note that multiple official Town of Sterling Land Use Regulations (LUR) maps (cf. <http://www.cayugacounty.us/portals/1/sterling/government/minutes/LURfinal.pdf>, especially pages 110, 111, 112, 114, and 115) show that the area's steep slopes and adjoining wetland, aquifer, and flood hazard areas are clearly documented by the Cayuga County Planning Department and were formally adopted by the Town of

Sterling both in the LUR and the Comprehensive Plan. I especially note the composite map on page 112 of the LUR labeled "Sensitive Environmental Areas." One can clearly see that the LOM is adjacent to two such areas: flood hazard and steep slopes areas. I believe that the Town's LUR requirements in Section 18-2 (pages 89 and 90) are sensible because they appear to call for exactly the pre-development field studies I have referred to before any clearing or excavation of such steep slopes is undertaken.

It does not appear from the main DEC permit application documents (Mined Land Use Plan, Storm Water Control Plan, EAF, etc.) that such studies as described in my review have ever been performed, and I recommend that you encourage your Town government and the DEC of the logic and necessity of acquiring this information before excavation begins or the slopes are further disturbed.

I see from your submitted drone aerial photographs that the area bordering the steep slope to the wetland and the Sterling Creek was apparently grubbed last fall with no apparent run-off controls in place for the immediate past winter melting and intense spring rains. I would expect that the DEC, Army Corps of Engineers, and/or your Town government should assess the wetlands and the creek for appropriate run-off and siltation/sedimentation concerns, as well as to test for the elevations and quality of residential well waters, before any further mining preparation and related impacts occur, inasmuch as such studies are generally part of both the SEQR process and, inter alia, your Town's overlay-district wetland and steep slope requirements.

It is unfortunate that the citizenry must go to such lengths to ask their leaders to conform to the laws and regulations they were elected to uphold, as per the editorial in today's Democrat and Chronicle.

Best regards,

A handwritten signature in cursive script that reads "Richard A. Young".

Richard A Young, PhD
Distinguished Service Professor Emeritus of Geological Sciences
SUNY Geneseo
(Updated resume attached separately)

RESUME WITH SELECTED BIBLIOGRAPHY, 2015

RICHARD A. YOUNG, PhD, GEOLOGY

Geologist: Department of Geological Sciences, SUNY, Geneseo, NY 14454 (585-245-5296, 5291)

Experience and Interests: Geomorphology, groundwater, environmental geology and waste disposal, photogrammetry, GIS, glacial geology (NY), lunar and planetary geology, sedimentation, engineering geology, Colorado Plateau Tertiary geology.

Education:

Cornell University, B.A. Geology, 1962

Washington University (St. Louis), Ph.D., Geology, 1966

Dissertation: ***Cenozoic Geology along the Edge of the Colorado Plateau in NW Arizona.***
(Hualapai Indian Reservation and adjacent areas)

Academic Positions, Appointments and Awards:

2013 (June)	Professor Emeritis , Department of Geological Sciences, SUNY Geneseo (Research projects)
2010	Geneseo Alumni Award
2004	President's Award for Excellence in Research and Creative Endeavors, SUNY Geneseo
2002	Awarded SUNY Chancellor's Research Recognition Award (Albany, October 2002).
1991-present	Appointed Distinguished Service Professor of Geological Sciences, State University of New York by SUNY Chancellor (at SUNY, Geneseo)
1990	Appointed Faculty Exchange Scholar , SUNY, by Chancellor Johnstone
1979-1991	Professor , Department of Geological Sciences, SUNY College of Arts and Science, Geneseo, New York
1977-1986	Chairman , Department of Geological Sciences, SUNY College of Arts and Science, Geneseo, New York
1966-1977	Assistant and Associate Professor of Geological Sciences, SUNY College of Arts and Science, Geneseo, New York

Selected Professional and Consulting Positions:

2012- present	Enviro Compliance Solutions, Inc. , Contract to USDOE and NYSEERDA as member of Subject Matter Expert, Erosion Working Group, for Erosion Studies for West Valley Nuclear Waste Site (West Valley Demonstration Project Phase 1 Studies at Western NY Nuclear Service Center).
2002-2003	US Army Corps of Engineers study of Genesee River erosion history.
2005-present	Citizens Representative , Akzo-Nobel Retsof Brine Mitigation Project (follow-up mitigation efforts following Retsof Mine collapse of 1994)
1994-present	Consultant to NY State Attorney General's Office (Peter Skinner, Tim Hoffman) on issues related to Retsof Mine collapse. Also, water-well pollution at Bennett Heights subdivision, Batavia NY, and Akzo Brine Mitigation committee.
1977-1993	Hydrologist with U.S. Geological Survey , Ground Water Branch, Ithaca, NY. W.A.E. Status for glacial, ground water, and sedimentological studies in the Genesee Valley region. IJC Studies of Great Lakes pollution and National Urban Runoff Program (NURP).
1980-1999	Occasional geologic consultant to H & A of New York, Inc. Including: Pure Waters Combined Sewer Overflows and Abatement Project (CSOAP) (structural deformation in deep sewer tunnels). Gravel Pit

evaluation and court testimony; **Iroquois Gas Transmission Pipeline photogeologic route analysis and field evaluation** (St. Lawrence to Hudson River).

- 1994 Hualapai Indian Tribe, Grand Canyon. **Geologic Consultant during Environmental Impact Studies**, western Grand Canyon Trip, October 1994
- 1993 -1996 Consultant to P. Hartnett, Esq., Tully Valley **Salt Mine (Mud Boils) Lawsuit**
- 1983-1994 Geologic **consultant to IMS Engineers, Superfund Hazardous Waste site geologist, Moyer Landfill, Pennsylvania** (Subcontract to NUS Corp.). Also additional projects on occasional basis. 1992-3 **Scofield Barracks (U.S. Army base), Oahu, Hawaii**, Groundwater contamination studies of base facilities, hydrogeology.
- 1985-1986 **Consultant to Rochester Gas & Electric/Morrison-Knudson Engineers** for hydrogeologic data evaluation of Lower Falls hazardous waste site, Rochester, NY.
- 1986-1992 Geologic **consultant to U.S. Bureau of Indian Affairs** (Truxton Canyon Agency, Arizona) and Hualapai Tribe for water well site selection on Hualapai and Havasupai Indian Reservations.
- 1978-2010 **Geologic consultant to Monroe County** Environmental Management Council, Landfill Review Committee and Monroe County Health Department, Waste Site Advisory Committee). Including funding from N.Y.S.D.E.C. and U.S.E.P.A. for location and evaluation of county-wide abandoned waste sites (Published as U.S.E.P.A. Document EPA-600/4-83-050, 1983).
- 1985-1987 Field reconnaissance reviews for N.Y. State Geological Survey, **Surficial Geologic Map of N.Y.**, Niagara and Finger Lakes Sheets.
- 1977-1978 Geologic **consultant, Town of Caledonia**, NY, Monroe-Livingston Landfill litigation (see publications).
- 1976 Geologic mapping for **N.Y. State Geological Survey**, Genesee River Watershed Mapping Project (Jointly funded by USGS, NYSDEC).
- 1972-1975 **Principal Investigator Contract for Apollo Missions 15-17** Photogeologic Analysis: Eastern Maria Data Analysis Experiment, NASA Contract NAS 9-12770, Manned Spacecraft Center, Houston.
- 1966 Geologic consultant to **Ocean Science and Engineering, Inc.** on **U.S. Army** contract to locate rock quarries in S. Vietnam. Electrical Resistivity and Seismic surveys, Rock drilling and field evaluation.
- 1962-1964 Geologic **research contract at Museum of Northern Arizona**, Cenozoic Geology, Hualapai Reservation (Developed into PhD dissertation, mapping project 1962-1966).

Current Professional Societies:

Geological Society of America (Fellow)

Research Awards and Grants:

Museum of **Northern Arizona**, Geology of Hualapai Indian Reservation (Summers 1962-1964).
Geological Society of America **Penrose Bequest Grant** (1964).
SUNY **Research Foundation**, Faculty Fellowship (1971).
NASA Contract NAS 9-12770, **Photogeologic Analysis Apollo Projects 15-17** (1972-1975).
SUNY Research Foundation, **Faculty Fellowship and Grant-in-Aid** (1975).
Collaborations in Art, Science, and Technology (CAST) N.Y. State Council on the Arts. **Use of ERTS satellite imagery** with M.J. Teres (Exhibit at Syracuse University, 1975).
NYS Geological Survey, **Mapping project, Genesee Valley** (1975-1976).
USEPA (Las Vegas Environmental Systems Lab) Jointly with Monroe County Environmental Management Council for pilot study, development of US EPA manual to **evaluate abandoned waste sites** (1981-1983).
NYS/UUP Experienced **Faculty Travel Awards**, 1985 and 1987, Arizona-Colorado Plateau Field Research.
Geneseo Foundation, Arizona Research, **Decade of North American Geology** project.
Cole Memorial Research Grant, Geological Society of America, 1988, **Research on Colorado Plateau**, Grand Canyon.

SUNY Geneseo **Research Development Award, Genesee Valley** Pleistocene Chronology, 1992.
Monroe County, NY, **Chronology of Irondequoit Bay** Pleistocene History, 1992.
Monroe County Health Department Study of **Irondequoit Creek submergence** (Ellison Park) (1996)
Monroe County Health Department Study of rates of **Genesee River meander migration** (1997)
SUNY Geneseo **Spencer Roemer Summer Research Fellowship**, \$5000 (1999)
US Corps of Engineers study of Genesee River erosion history, \$64,000, (2002-2003)
Univ. of Arizona, 2004, (cooperative research with George Burr) **25 radiocarbon ages** (\$400 each)

Teaching and Research Interests:

Tectonic geomorphology, fluvial geomorphology, general geology, lunar and planetary geology, glacial geology, remote sensing and geographic information systems (GIS), environmental geology, sedimentation, Cenozoic geology of Colorado Plateau/Grand Canyon, structural controls of ground water, Hawaii & New York (global stadial and interstadial glacial events).

Science Television Documentaries (participant, consultant)

NOVA Grand Canyon-John Wesley Powell (1992)
National Geographic Channel- Naked Science series: Grand Canyon (2007)
History Channel – How the Earth was made series: Grand Canyon (2009)

Travel and Field Experience:

New Zealand, South Vietnam, Southwestern U.S., Hawaii, New England, Big Horn Mts., Wyoming, Ozarks, Central and western N.Y., Nevada Test Site, Scotland. Coleader, Geological Society America, Colorado River-Grand Canyon Geological Society of America Geoventure Trip (WGBH-NOVA) J.W. Powell Video Program, 1992.

Personal Data:

Born Providence, R.I., 1940, Married, two children (Christopher, Erinna)
Wife: Diony (Sutherland), New Zealand born. Author; Editor of journal, ***Birth*** (Wiley-Blackwell).
Home phone: 585-243-0087

Professional Committees:

Resource Group Member Ad Hoc Lunar Photography and Cartography Committee, **Lunar and Planetary Science Inst., Johnson Space Center**.
Crater Analysis Techniques Working Group, **NASA, Office of Space Science**, Washington, D.C.
International Geodynamics Committee (Working Group 7) Organizing Committee for Plateau Uplift Symposium and Associate Editor for Proceedings, **Johnson Space Center**.
Crater Analysis Methodologies Workshop, **USGS/NASA**, Flagstaff, AZ, NASA Tech. Mem. 79730, Icarus, v. 37, p. 467- 474.
Enviro Compliance Solutions, Inc., Contract to USDOE and NYSERDA as member of **Subject Matter Expert, Erosion Working Group**, for Erosion Studies for West Valley Nuclear Waste Site (West Valley Demonstration Project Phase 1 Studies at Western NY Nuclear Service Center).

Major Conferences (Involving organization, participation, workshops, publications):

Lunar and **Planetary Science** Conferences (Annual) 3rd through 8th, 10th, 12th, 15th (papers published in proceedings).
NASA Lunar Utilization Conference: Utilization of Unique Mare Stratigraphy for determination of **lunar surface material properties and location of subsurface operations facilities** (Paper at Special Session of 7th Lunar Science Conference, 1976).
15th Annual Binghamton **Geomorphology Symposium** (publication, Tectonics, Colorado Plateau-Grand Canyon).
Interdisciplinary Aspects of **Radioactive Waste** Generated by Nuclear Power Plants (SUNY Cortland, 1983, Speaker).
Till facies workshop: **Glacial Deposits in the Northeast, N.Y.** State Geological Survey, 1983.

Risk Assessment at **Hazardous Waste Sites**, American Chemical Society Symposium, Las Vegas (1982, paper in proceedings, hardbound text, American Chemical Society).

The Impact of **Waste Storage and Disposal on Groundwater Resources**, U.S. Geological Survey, Ithaca, (paper in proceedings).

Symposium: Mesozoic and **Cenozoic Tectonics of the Lower Colorado River** Region, Geological Society of America, Anaheim, CA, Paper in Anderson-Hamilton Volume, 1982.

Tectonic framework of the **Mohave-Sonoran Deserts**, California and Arizona, Panelist, Paper in proceedings, 1980. USGS Open-File Report 81-503

Rochester Academy of Science Centennial Meeting on **Geology of Genesee Valley**, Co-chairman, Paper in proceedings, 1981.

N.Y. State Geological Survey Conference: Status of the **N.Y. Surficial Geologic Map** (1981).

First National **Groundwater Monitoring** Conference and Exposition, Ohio State University, 1981.

Crater Analysis Methodologies Workshop, **NASA/USGS**, Flagstaff, 1977.

International Geodynamics Committee **Plateau Uplifts Conference**, Field trip co-leader, Las Vegas to Flagstaff, paper in proceedings, 1978, Tectonophysics, V. 61.

Regional Geophysics and Tectonics of the Intermountain West, Geological Society of America **Penrose Conference**, Alma, Utah, 1975.

Hawaiian **Planetology Conference**, Hilo, Hawaii, NASA, 1974, Mars Mapping Conference.

Pleistocene Stratigraphy in the Northeast, Geological Society of America **Penrose Conference**, Univ. of Mass., 1974.

Pacific to **Arizona Crustal Experiment** meeting (PACE), USGS, Flagstaff, 1985.

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Field-trip co-leader for "**Structure and Geomorphic Character of Western Colorado Plateau in the Grand Canyon-Lake Mead Region**", Geological Society of America Rocky Mt. Section Meeting, Flagstaff, 1986.

Field-trip co-leader for "**Geomorphology and Structure of the Colorado Plateau/Basin and Range Transition Zone, Arizona**", 100th Annual Meeting of the Geological Society of America, Phoenix, AZ, 1987.

Symposium Organizer, Chronology and Style of **Laramide and Early Tertiary Events in the Southern Great Basin and Adjacent Colorado Plateau Transition Zone**, Geological Society of America Cordilleran Meeting, Las Vegas, March 1988.

Co-author, Geological Society of America Decade of North American Geology Volume (DNAG), **Geomorphic Systems of North America, Special Volume 2** (Colorado Plateau Tertiary history, Chapt. 8), 1987

PACE/CACTIS Conference, U.S. Geological Survey, Flagstaff, AZ, 1988 (**Pacific-Arizona Crustal Experiment**).

28th International Geological Congress, Washington, DC, July 1989, Symposium presentation and poster session, Colorado Plateau.

Geological Society of America, Northeastern Section Meetings, Buffalo, 1996, Organizer: **Symposium on Early and Middle Wisconsin Events in the Great Lakes-Eastern North America Region** (Fall 1996).

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Geological Society of America Northeastern Section Meeting, Providence, RI, 1999, **Regional Hydrologic impact of a large**

salt mine collapse beneath a deep, ice-scoured, drift-filled bedrock valley, west-central, NY State, Abstracts with Programs, v. 31, no., 2, p. A-81, paper presented.

Geological Society of America Annual Meeting, Denver, October 1999, Paper accepted for presentation in Theme Session, **Terrestrial Signature of Heinrich Event (H4) in Western NY**.

Workshop for western **NY Secondary School Teachers**, Letchworth Park, October 18, 1999; Lecture and Field Trip (Ideas and materials for teaching glacial geology topics).

Chair and organizer of Symposium on **Origin of Grand Canyon/Colorado River**: June 2000, Grand Canyon National Park, Sponsors: Grand Canyon National Park, Grand Canyon Association, US Geological Survey, Northern Arizona Univ., Arizona Geological Survey, Nevada Geological Survey, SUNY Geneseo Geological Sciences Department (Grand Canyon Association Monograph 12 (2001)

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Young, R.A and Crow, R., 2014, Paleogene Grand Canyon incompatible with Tertiary paleogeography and stratigraphy: Geological Society of America, Geosphere, v. 10, #4, p. 664-679.

Young, R.A., 2014, Paleogene rim gravel of Arizona: Age and significance of the Music Mountain Formation: Geological Society of America, Geosphere, v. 10, #5, p. 870-891.

Research Papers in Preparation:

Geology and geologic maps of the Milkweed Canyon-Hindu Canyon quadrangles, western Grand Canyon, Hualapai Indian Reservation, Mohave Co. Arizona (study of pre-Grand Canyon drainage system).

Research and Projects in Progress (2011-2013):

Geologic history and chronology of late Cretaceous-Tertiary sedimentary rocks in northern Arizona using volcanic ash dates, U-Th/He thermochronometry, zircon dating, terrestrial fossils, and mammal teeth (jointly with various colleagues).

Radiocarbon chronology of unique Middle Wisconsin glacial advances in the Genesee Valley circa 35,000 years BP and correlation with marine Heinrich events in the North Atlantic region.

Development of highly sinuous channel forms without superposition in massive carbonates in the Grand Canyon region.

Erosion studies of small drainage basins as a function of age (12,000 to 16,000 years) in western NY. Outgrowth of erosion rate studies for western NY nuclear waste storage site at West Valley.

Conversion of Arizona field mapping research (1962-present) to ArcView products for archival preservation and distribution to Arizona State Geological Survey and interested colleagues (Sabbatical 2007).

Hualapai Indian Reservation: Location of water well for pipeline to Grand Canyon West (2009-2010).

Hualapai Indian Reservation: Dating of volcanic ash bed in Tertiary section, and zircon provenance analyses with W. R. Dickinson, and G.E. Gehrels, and R. Crow (field work, June, 2009-2010)

Workshop co-organizer (June 2010), <https://sites.google.com/site/crevolution2/home>, Colorado River evolution, US Geological Survey, Flagstaff , AZ (open-file and GSA publications in preparation).

Co-organizer, Geological Society of America Annual Meeting, Denver: Topical Session on: Cenozoic Landscape Evolution of the Rocky Mountain–Colorado Plateau Region: The Colorado River System from the Rockies through Grand Canyon to the Gulf of California, GSA *Quaternary Geology and Geomorphology Division*, Karl Karlstrom, Andres Aslan, Kyle House, **R.A. Young**, November, 2010.

Co-editor, Geological Society of America, Geosphere (e-journal) special issue on Colorado River Workshop, CREvolution 2, (June 2010), See above references (Deadline December 2011).

Geological Society of America Annual Meeting Special Session: CREvolution 2: Cenozoic Landscape Evolution of the Colorado Plateau–Rocky Mountain Region and the Carving of Grand Canyon (Colorado River-Colorado Plateau Symposium); Co-organized, speaker, and co-chair. Denver Colorado, October 28-29, 2013.

Departmental Intercession Field Excursion Program for Geology Majors, SUNY Geneseo (organizer)

Arizona: Spring 1991
Hawaii: 1995
California-Nevada: 1997
New Zealand: 2001
New Zealand: 2009
Death Valley and Adjacent areas, 2011

Miscellaneous Activities:

Elected **Board of Directors, Rochester Committee for Scientific Information**, Spring 1990-present
Elected **Vice President for Science**, Rochester Committee for Scientific Information, 1991-present
Voluntary (pro bono) consultant: Geologic issues for governmental, local community and citizen groups and individuals.

Public records must be public

July 8, 2015 D&C

City's sloppy handling of open records requests should be everyone's concern

We know. Most people don't lose sleep at night worrying about things like open government or transparency. FOIL is something you use to wrap up your leftovers. And journalists, so we've been told, can be a bit overbearing when it comes to demanding that "public information" is, well, public.

So perhaps you yawned when Steve Orr wrote a watchdog blog last week, noting the city of Rochester's total lack of response to Freedom of Information requests from *Democrat and Chronicle* reporters.

Here's a gentle wake-up call.

And it comes with a strong message for people working in all levels of government: Being transparent and accountable are two of the most important aspects of your job. Take them seriously.

Before we get into a brief history lesson about the foundations of democracy in America, let's touch on some everyday concerns related to the city's failure to hand over public records. Several readers shared their experiences after reading Orr's blog. Here's what two of them said:

» A contractor says she has been seeking information for nearly two years to prove the city owes her money. She says she is still waiting to be given an opportunity to go in and take a look at the records.

» A local attorney says motorists are having trouble getting hold of any documents related to the city's red light camera program.

You might be tempted to label these as examples of "poor customer service," except that we are *not* customers of our government. We're supposed to be the source of its power. "Governments are instituted among Men, deriving their just powers from the consent of the governed," Thomas Jefferson wrote in the Declaration of Independence.

As American citizens, we not only have the right to know what our government is doing — it is our responsibility.

"At its core, participatory democracy decries locked files and closed doors," notes the Reporters Committee for Freedom of the Press.

Brief history lesson over.

The mayor's office blames an outdated tracking and response system for the city's violations of New York's Freedom of Information Law. Maybe so, but our reporters don't recall previous administrations having quite as much trouble adhering to the law. The city indicates money has been allocated to fix the system within the coming months, and we will be watching.

To be fair, the problem is certainly not limited to the city, as our recent investigative report on the Buffalo Billion showed. It's not just a problem in New York state either.

Some of us in the media do lose sleep over the many FOIL transgressions and the lack of accountability exhibited by some elected officials. We are dismayed by the mistrust and apathy that breeds among citizens.

It was heartening to see what happened when several Wisconsin lawmakers attempted to dismantle that state's open records law last week, but knowing the move was even being considered is chilling.

Yes, we take FOIL seriously. Our government, as well as all American citizens, must do the same.

Exhibit F

**Comments to NYS DEC Region 7 re:
Negative Declaration**

Sanford Road Martville Mine

by

Dr. V. M. Fichera (PhD)

COMMENTS TO THE NYS DEC ON THE MARTVILLE MINE APPLICATION

June 5, 2015

N.B. The order of presentation of items discussed is not necessarily in order of importance.

Wetland issues

The application does not appear adequately sensitive to possible issues affecting the Sterling Creek, a national wetland area which, even according to the drawings submitted by the project geologist, falls within the property of the proposed toe of the mine. A map in the file, prepared by the DEC and dated 2/24/2015, when enlarged digitally on a computer screen, also shows that the mine footprint crosses the boundary of the federal wetland. Alarming, the applicant proposed, and the DEC apparently overlooked, the use of the land on and/or above the steep sloped area adjoining or part of the wetland as the location for fill covered by compacted materials and made such plans part of the conditional Negative Declaration. The Army Corps of Engineers is apparently issuing a letter of warning to the applicant that a formal delineation of the wetland should be made and that, should fill violations of the national wetland occur, there will be penalties imposed. The national wetland appears to be part of a major town aquifer near or adjoining the site, as well. Of course, it is not in the interest of the public or the planned reclamation and conservation of that land for fill and/or contaminant spills to occur, therefore the public is concerned that the DEC take all necessary steps to ensure that proper precautions are taken to prevent such violations from occurring.

Slope issues

Related to the wetland issues are the slopes of the mine footprint which overlook the Sterling Creek. The Town of Sterling Land Use Regulations (LUR) require that applications for Special Use Permits for lands with a slope of 15% or more must provide a formal topographic study and submit it to the town; the maps appended to the Town's LUR clearly indicate that the property in question contains slopes of that magnitude. There is no evidence in the DEC file that the applicant has contracted for a topographical study. Further, the application shows signs of inexactitude, if not dissimulation, in this matter because slopes proposed for mining are described as 8% to 24% in the narrative of the applicant's formal documents, yet are entered into the formal DEC application questionnaire as no more than 15%. Further, the DEC was recently informed by the applicant or his representative that the area of the mine footprint located near the slopes down to the wetland was completely cleared by the previous owner during 2014. None of the images or narrative submitted by the applicant make note of that fact, despite its relevance for the Storm Water Control Plan. Without the anchoring of trees, slopes composed of soils of extreme drainage may pose challenges for the control of runoff, especially in the case of mining close to the water table which angles toward the creek, as is proposed by the applicant. The DEC has imposed a requirement that mining may not occur below the 5 foot highwater level above the water table, yet one entry on the DEC application questionnaire reports the average depth to the water table to be only 3 feet (probably an error although a testing site was only 3 feet), which

implies that the applicant may be planning to conduct mining operations below the 5 foot required depth and simply backfill the area with other soil. The applicant's Storm Water Control Plan consists overwhelmingly of reproduced pages of excerpts from the DEC's, etc. boilerplate documents and does not go into much detail as to how this will be tailored to the topography of the site, part of which may actually be part of the national wetland. Of course this lacuna is more than explained by the absence of the topographical study required by the Town LUR. The DEC should seek more details, and review the adequacy of, the applicant's plans to prevent runoff from filling the Sterling Creek.

Application date issues

The Cayuga County Image-Mate site reports that the applicant only acquired the property in question on 9/4/14 with the registration of the deed, etc. recorded the following month. However, the applicant apparently initiated the review process in June 2014. If the applicant had the permission of the owners to control and apply for a permit for that site for a mine before the formal closing date of the sale, and if the land was cleared and mining conducted on the site between June 2014 and the closing date, did the applicant ensure that all relevant precautions were taken for the protection of endangered species during such clearing and for the legal mining of gravel at the site which he was representing to the DEC as under his control as of the end of June 2014?

Endangered species

As noted above, a significant area of the site of the proposed mine, reportedly in the vicinity of the toe of the mine, was apparently cleared during 2014. While the application contains statements that forests will be cleared in conformance with the National Fish and Wildlife Service's forestry guidelines for the protection of the state and nationally endangered Indiana Myotis bat, there is no evidence in the file that any clearing done at the site was in conformity after the applicants June 2014 representation of his control of the site. The application and the file are also silent on any efforts to document whether or not the endangered species was present on the property proposed for the mine. Verbal statements that the bat is not present are not sufficient without documentation that a scientific check of the area was done. As the DEC knows, the 2012-adopted plan by the NFW includes safeguards not only for the properties where the bat has been sighted but for those properties within 10 and 20 mile radii of sightings. Similar concerns apply to bald eagles which are known to be in the area and possible nesting sites.

The disturbance and alteration of hamlets in the Town of Sterling

The Town of Sterling LUR are specific that mining activities are prohibited in hamlet districts and that the traffic of any mine operated in the Town of Sterling's residential/agricultural districts may not travel through hamlets. Yet the applicant has chosen a property for the proposed mine which shares Sanford Road with the Hamlet of North Victory in the Town of Sterling. The DEC in advertising the application on its DEC-7 site and in the required newspaper notice also dissimulates this fact, citing the mine's location as 1.8 miles away from the Hamlet of Martville rather than giving its North Victory location. Moreover, the Hamlet of Martville is just one of four hamlets which would be trafficked by the trucks of the proposed operation, yet the DEC's

disingenuous notices give the impression that the mine is located in a rural setting, away from hamlet communities. Indeed, the mine cannot be operated without traversing either/or both/and Route 38/Route 104 in the Hamlet of North Victory. It appears that Pople Road (County Route 112) is also within the Hamlet of North Victory, and Pople Road is targeted in some parts of the application as a main route for mine traffic of from five to ten trucks an hour. This reliance on Sanford and Pople Road, with their narrower (shoulderless and unstriped) road surfaces and problematic angles and sight line issues, together with the inter-municipal safety issues involved both there and on Routes 38 and 104 have led the Cayuga County Planning Committee to recommend to the Town of Sterling that the application be rejected.

In addition, and as the County Committee also in part noted in its comments, the applicant will have to seek multiple Town of Sterling LUR variances to permit him to locate and operate the proposed mine in violation of, inter alia, the LUR access road setbacks and setbacks from residences, as well, thus destroying the essentially communal and peaceful expectations of Hamlet of North Victory residents. Indeed, it appears that there were irregularities in the seeking and obtaining of the first variance, as the required public hearing notice to the owner of lot 20.00-1-63.2 was not requested, albeit likely accidentally. Further, and perhaps most importantly, the “hardship” of which the applicant complains as he is/will be seeking these multiple LUR variances is entirely self-created as the LUR was enacted in June 2014, at the time he was representing himself as in control of the property for this application but months before he entered into a formal August 2014 contract for the sale with a September 2014 closing. These sought variances will radically alter the essential nature of the neighborhoods involved, depressing property values, increasing noise levels, and endangering the safety of residents and drivers on the above-mentioned roads.

NYS Route 104 / NYS Route 38 intersection

The approval of this project will radically alter the traffic patterns and accident hazards of this already dangerous intersection and blind-curved hill, etc. at this central Hamlet of North Victory location. The NYS Department of Transportation is requiring the conduct of traffic gap and accident analyses of the area and would impose a radical alteration of the hamlet area’s interface with these roads by the installation of heavy duty shoulders to accommodate the travel and turns of such heavily-loaded vehicles (tri-axes and eighteen-wheelers are boasted of in the application). As of this writing, reportedly three accidents have already occurred at that intersection in 2015 – and this, before the addition of planned double-lane turns of trucks from the proposed mine every six to twelve minutes ten hours a day. Again, the nature of four hamlets and the North Victory Sanford Road/Route 104/Pople Road neighborhoods will be radically altered by the proposed mining operation which expects everyone and everything in its physical path to bend to the will of the applicant.

Noise levels

The file of the DEC made available for public inspection during the comment period, contains a chart with the following algorithm for determining the aggravation of ambient noise levels to be expected from the proposed mining operation: “Difference of 6, add 1...; Difference of 1, add 3...; Difference of 2, add 2...” and further “Difference of 8, add 1...” This algorithm was

apparently applied to the calculation of noise levels captured from 9:45 am to 10:38 am on Sanford Road and to the calculation of the “worst case scenario.” Yet, despite the fact that adding two decibels that are closer to each other increases the sound more, the DEC uses a maximum of “six” spread in its determination of the impact of additive noise, which effectively masks the fact that higher levels could be experienced. The DEC Region 7 Noise Analysis Procedures indicate that erecting barriers around the processing equipment (e.g. a brick wall) could radically reduce the noise levels, yet there is no evidence that the DEC has discussed such mitigation procedures, instead showing itself willing to have the applicant seek waivers from residents instead.

Further, while the standard DEC procedure is to take the “worst case scenario” – enacted with all equipment running at the same time in the same place – uniquely to accommodate (i.e., advantage) this applicant over the residents of the neighborhood, the DEC has showed itself willing to alter its standard practice and to integrate an intentionally deflated “worst case scenario” invented by the applicant into its conditional Negative Declaration, alleging that all four pieces of equipment would not be running in the same place at the same time. Further, the scenario included a screener but apparently not a crusher in operation – thus also “cooking” the data to reduce the analysis of noise levels to a scenario that is actually not at all the “worst case scenario” for the operation.

Additionally, this recalculation of the noise of the project does not appear to include the likely idling of one or more additional trucks which would be in operation for a potential ten truck per hour schedule exiting the mine, nor was it clear that diverted traffic and other off-site project-generated noise, documentable meteorological effects (e.g. winds, snow, etc.) were included in the calculation as suggested by the DOT Construction Noise Handbook. Therefore, this “accommodation” of the applicant appears unreasonable because it is more than likely that the noise levels discussed in the DEC analysis do not correspond to what the North Victory Hamlet residents will experience from mining operations, minimizing what will be the actual effects. Residents of the Town of Sterling at a distance of one and one half miles from last year’s mining activities at the site, reported being disturbed by the sound transmissions even at that distance. Further, the DEC file shows correspondence indicating that the applicant and the DEC may be seeking a waiver of rights to the EPA-recommended 55 decibels from a resident only 175 feet from the operation because the noise levels even of the minimized “worst case scenario” will apparently exceed that level. In other words, the data appear to be “cooked” and the residents placed under undue burden to “accommodate” this proposed project.

Heritage and archaeological issues

The application forms filled out by the applicant misrepresent the proposed mine as not falling within any possible heritage-protected archaeological sites. The file at the DEC does not include a copy of the Archaeology Assessment Form. However, the DEC did insist on the conduct of an analysis of Phase I of the project (an area of 5.5 acres) and Alliance Archaeological Services performed that analysis and cleared Phase I of the project free of heritage issues. The Park, Recreation, and Historic Preservation Commission, in its June 3, 2015 letter extends their clearance to Phase II of the proposed mine operation. It remains to be proven to the public and to the Native American communities that the appropriate archaeological studies were actually

conducted at the Phase II site because no such Phase II report was available for inspection in the file even as the Parks Commission was apparently in possession of such a document. Moreover, the report by Alliance Archaeological Services identified and provided photographs of a “twentieth century” dump on the Phase I site which apparently the DEC had not noticed until the comment period. An analysis of the possible contamination of the site should be performed, in the event that, for example, vehicle oils, etc. in addition to tires and waste, etc. were dumped at the site.

Document submission and availability irregularities

Accessibility to the public of the official document file is problematic. The Syracuse DEC office does not appear equipped to provide reasonable accommodation for members of the public with visual disabilities, even as the file’s paper contents are not made available on the Website or onsite in digital format and no magnification equipment appears to be in the office, etc. Additionally, access to information is complicated not only by the policy to not post materials on the DEC Website, but by the confusion concerning the dates and conflicting data in many of the submissions in the paper file made available for inspection and the obvious incomplete status of the paper file. When the issues described in this section, together with the distance of the DEC office from the project site, are coupled with the Town of Sterling’s intentional failure to post on its Website the minutes and agendas of any of the Town boards involved in decision making during the period of end of February 2015 to date – and with none of the Martville Mine SEQR or Special Use Permit application files available onsite in the Town Hall either, despite requests in writing for access – it appears that the requisite transparency in government concerning this Martville mine application is less than adequate at all levels of government except the Cayuga County Planning Committee. Unique among the agencies involved in this application, the Cayuga County Planning Committee promptly posted all materials received on this application on its Website, as well as the minutes of its May 29, 2015 meeting which contain its formal recommendation to the Town of Sterling to reject the application. However, whereas most of the public is unaware of the requirements of state law for intergovernmental review at the county level, very few residents of the Town of Sterling are familiar with their Website. The application is thus being shielded from much of the public, especially those residing in the hamlets of the Town, by the confluence of these facts and circumstances.

Formal document content inconsistencies, inaccuracies, irregularities

The applicant has submitted multiple versions of the Mined Land Use Plan and the Storm Water Control Plan – all with the same month and year on the title page rather than the exact date of submission. The DEC should not permit this type of intentional confusion propagated by undated applicant submissions because the paper copies printed from electronic files cannot be distinguished one from the other without internal dating within the text. The applicant may later attempt to enforce an earlier version of the document with future DEC personnel or current personnel may fail to enforce the later document which was made to incorporate DEC requirements. Additionally, it appears that the applicant had contracted for an archaeological analysis of Phase II of the project which the Parks, Recreation and Historic Preservation Commission reviewed but the document was apparently never received by the DEC. The moving papers also show that the applicant’s geologist expected to have the DEC declare the application

complete before the submission of all required documents. Indeed, the file did not contain evidence that the applicant had ever submitted the requisite Archaeological Assessment Form. Meanwhile, the fact that the vast majority of the Sanford Road property, including the mine footprint, requires such review before disturbance is clearly indicated on the DEC's color map dated 2/24/2015.

There may also be more than one submitted version of the formal DEC application questionnaire which contain inaccurate statements, and even the DEC's own form submission reviewed onsite at the Syracuse office was at times inaccurate.

For example, in the 2/20/15 signed version of the Environmental Assessment form, the applicant:

- asserts in C.2.b, counter to fact, that there are no heritage issues to be reviewed;
- intentionally omits the wetland and slopes overlay districts in C.3;
- states in D.1.h that no pond will be created even as a pond is indicated in the narrative of application materials (cf. section 3.2 of the Storm Water Control Plan);
- states in D.2.a.iv that there will be no onsite processing of materials – which is contradicted, inter alia, by the DEC Negative Declaration;
- states in D.2.b that no wetland will be affected without having performed any wetland delineation or topographical survey;
- fails to mention the use of crushers in D.2.f and the need for review and permits for such machinery in D.2.g, despite affirmations of the use of crushers in other moving papers and in the Negative Declaration of the DEC;
- reports only dust as an emission from the operations, intentionally omitting diesel fumes, etc. in the D.2.i concerning air pollutants;
- fails to report in D.2.j any peak traffic hours before 9 am or the estimated maximum of 100 trucks per day described consistently in the narrative submissions and fails to report how parking of vehicles will be accommodated onsite;
- lists construction on Saturdays from 9 am to 4 pm in D.2.l even though Town of Sterling LUR clearly provide only for residential deliveries on Saturdays;
- does not answer accurately the question in D.2 m.i and answers no to the box check in section ii despite the fact that woodland natural barriers will be removed as part of the project;
- falsely answers D.2.o, denying that there are any diesel fumes, etc. of equipment that will be emitted on the site despite the fact that such mining uses equipment with such emissions, and that such emissions, despite being regulated on each vehicle, collectively produce odors that may disturb neighboring residences, especially one that is only 175 feet from the proposed project site;
- intentionally conceals in E.1.a that there is forest onsite and in the neighboring vicinity, and that the project is across the road from and will drive through the Hamlet of Victory, a residential section of the Town of Sterling in existence for two hundred years, despite Town of Sterling LUR forbidding such traffic through hamlets by Town of Sterling-based industrial and mining operations;
- fails to report in E.1.g the existence of a “twentieth century” dump onsite, identified by the analysis performed by Alliance Archaeological Services and even referred to in the narratives submitted by the applicant, which has not been analyzed for the existence of potential hazardous wastes therein;

- cites only Alton cobbly loam in E.2.d as 100% while the DEC's Negative Declaration and the applicant's Storm Water Control Plan in 2.2.2 lists additional types of soils, Palmyra and Howard;
- intentionally suppresses from E.2.f the fact that there are slopes of 8% to 25% in the proposed mining area, which are described both in the applicant's submitted narratives and in the DEC's conditional Negative Declaration;
- answers no to E.2.h without having performed a formal delineation of the wetland boundaries, while planning to bury fill on the slope that is in or adjacent to the wetland even as the DEC map generated on 2/25/2015, when enlarged, shows that a portion of the
- does not provide documentation for the assertions made in E.2.m, n, and o, although the site is within a multiple-mile radius where the protected species of bald eagle and Indiana Myotis bat are suspected or have been identified;
- does not provide evidence that the site has been verified by any certified biologists for rare or endangered plant species to justify the negative response to E.2.p.

The Environmental Assessment Form for Mined Reclaimed Projects 6/23/14 also contains inaccuracies reported by the applicant:

- the location of the Sterling Creek is described in A.1 as 200 feet from the project while the DEC's and the applicant's maps submitted show that the toe of the mine and the footprint of the mine appear to actually intersect the Sterling Creek wetland even if the flowing water may be at 200 feet distance;
- once again the applicant reports the existence of only one type of soil, in A.4;
- the distance to the nearest property is listed as 300 feet in A.6. while the moving papers and the noise analyses in other moving papers list 175 feet because, of course, the mine's operations include its use of access road on the project site and not just where the actual excavation occurs;
- the distance listed to the nearest well in A.7 is 300 feet while the moving papers discuss the use of a well that is pictured on the applicant's accompanying map as less than 50 feet just north of the mine footprint;
- the depth to the water table is listed in A.8 as 3 to 60 feet while elsewhere in the moving papers the "average" is listed as 3 feet;
- the applicant misrepresents the conformity of the project site to all zoning regulations in A.12. Only one variance was granted by the Town of Sterling Zoning Appeals Board, for the location of the access roads less than 1000 feet from residences (a decision which needs to be revisited because of the applicant's and Town's failure to provide written notice to the property owner of 20.00-1-63.2 before the decision was made), the County Planning Committee identified the unaddressed zoning requirement of 1000 feet from residences which has not yet been applied for, the Town Planning Board has been informed of multiple other zoning violations by the project, as well, including but not limited to the requirement of a topographical study and the requirement than no traffic from a mining operation drive through a hamlet (this project borders the Hamlet of North Sterling and would potentially drive through at least three other hamlets of the Town located on Route 104);
- the response to section B.8 neglects to indicate the plan to bury fill at or above the Sterling Creek wetland located at the toe of the mine, described in the narratives;

- the response to B.9 indicates only screening equipment will be used but in other parts of the moving papers, the applicant and the DEC discuss the use of crushers, even as the applicant attested to the DEC air quality engineer that no crushers would be used to avoid testing, etc. for air quality for the elsewhere mentioned crushing operations, listed as not exceeding 200 tons per hour (which would require a permit for anything over 150);
- the response to B.10 misrepresents the number of trucks, listed elsewhere as averaging at a minimum five trucks per hour and averaging as a maximum 10 trucks per hour which would, of course, enable the applicant to exceed ten trucks per hour provided his maximum averaged 10 trucks per hour;
- no pond is reported in C but a pond is discussed in 3.2 of the applicant's Storm Water Control Plan;
- the map submitted with the form declares the land in the lower section of the mine footprint to be wooded while the applicant later revealed to the DEC that the area was in fact cleared in 2014

The DEC's filled sections of the Full Environmental Assessment Form Part 2 as Lead Agency also contained glaring inaccuracies:

- no indication in 1.d that more than 1,000 tons of natural material would be excavated and removed, when the project proposes 1.4 million cubic yards of sand and gravel to be so removed;
- the DEC indicates in 2. that no geographical structures like cliffs will be affected even though the excavation will essentially level an area down to 60 feet below its current height;
- the DEC answered no to 3 concerning any wetland impact without having any topographical or wetland delineation study upon which to base its clearance;
- the DEC declared no impact on water (area wells, etc.) in 4.a without ever having the applicant report the amount of water to be extracted from the onsite existing well, and does not admit in 4.f the known risks of the storage onsite of fuels for the equipment and trucks above groundwater and near the principal aquifer in the area; the applicant admits such storage in his document "Best Management Practices for Ground Water Protection;
- the agency answered no impact to air in 6.a despite having elsewhere been informed of and approved in the Negative Declaration the use of crushing equipment requiring an air permit – all the while allowing the applicant to avoid an air quality impact assessment by the DEC on his statements to a DEC engineer that no crushing equipment will be used (see 2/17/15 and 2/14/15 letters from the Mr. Giles to Mr. Clancy of the DEC);
- the DEC is assuring no impact on plants and animals in section 7 – even denying in subsection h that more than 10 acres of forest will be converted – and this is all with no written reports from any recognized expert studies of the 35 acre site to be entirely transformed, destroying any possible habitat as well as all vegetation, despite known spottings of bald eagles within a few miles radius of the property, the possible presence of the Indiana Myotis bat, and the failure to even name any of the species of plant and forest vegetation on the property so that the public may check on their rare or endangered condition in the official listings; Dr. Robyn Niver of the National Fish and Wildlife Service should be consulted about the Indiana bat and the bald eagle and the FWS office contacted as well for a biologist to be assigned to the project;

- the DEC denies any impact whatsoever on aesthetic resources despite the validity of section 9 despite the fact that 9.c is true (it is likely that the woodlands in winter will provide a view of the operation, and 9.d is also true (there are residents of the Hamlet of North Victory across the road from the operation on Sanford Road who will view the site daily during routine travel and recreational activities); the neighboring residents have expressed concern at the destruction of their Hamlet of North Victory property values, at the dangers to their health and safety on roads not meant for industrial truck travel, and the noise and air pollution which such a major mining operation will produce, all in contravention of the Town of Sterling LUR zoning regulations, yet the DEC makes no record of these major negative impacts in its formal reporting on the form;
- the DEC has recorded no or no significant impact on archaeological sites in section 10, even though only two of the four Phase zones of the 35 acre site have been formally reviewed by an archaeologist;
- further, in section 10.e, the DEC absurdly affirms that there will be no alteration of all or part of the site or property and no alteration of the property's setting (adjacent to a 200-year old residential hamlet) or integrity (the excavation and removal of 1.4 million cubic acres) – even going so far in its Auburn newspaper advertisement and its DEC-7 Website announcement as to dissemble the location of this proposed mine (which would share a road of the Hamlet of North Victory and drive its trucks through that hamlet and three others five to ten times an hour), stating in those formal notices that the site is 1.8 miles south of the Hamlet of Martville, conveying to the public that the entire area of the operation is rural agricultural when it manifestly is not;
- in 11, the DEC again makes conclusory statements of no impact to wildlife without any formal expert opinions concerning plants and animals on state and/or national rare or endangered lists;
- the DEC gave an unqualified no to the questions in 13 about impact on transportation, traffic, road integrity, the patterns of movement of people and vehicles – all without having heard back from the County Planning Committee (which on May 29, 2015 formally voted to recommend to the Town of Sterling that this application be denied for exactly such traffic and safety reasons) no having heard back from the NYS Department of Transportation which has expressed, again, on May 29, 2015 the need for traffic gap analyses, accident analyses, and possible heavy duty shoulder construction at an intersection within the Hamlet of Routes 38 and 104 before such assurances might possibly be made and the DOT did not yet address the alternate route where trucks would exit Pople Road onto Route 38; however, the applicant's additional/alternate route (Sanford to Pople Roads to Rte 38), not in the Mined Use Plan but in correspondence to the DEC dated 2/17/15 and 2/24/15 was evaluated by the Cayuga County Planning Committee which, for reasons of safety (road angles, sight lines, etc.) and degradation of roads not intended for such industrial use) and all such inter-municipal effects, has instead indicated the exact opposite of what the DEC affirms on its mandatory form: the project poses all sorts of serious high-impact problems;
- the DEC has entered no in questions in 15 about noise and odors, despite having allowed the applicant to “cook” the noise data and to avoid an air quality review of a site that will be operating multiple trucks and equipment at the same time across the road from Hamlet of Victory residences;

- in section 17, the DEC misrepresents the community and zoning of the adjacent lands as consistent with such a mining operation when the neighborhood of the operation is zoned as the Hamlet of Victory where no mining operations from elsewhere within the Town of Sterling may be conducted within its borders or traffic therefrom traverse the hamlet; the operation is totally inconsistent with the zoning of the hamlet which borders the proposed mine site and the hamlet will be radically altered by such a project: property values will decline, health and safety will be affected by inordinate increases in truck traffic, noise, and odors, and an historic 200-year old hamlet may be reduced to a ghost town from the imposition of this project which acquired a Negative Declaration in part by means of false representations by the applicant, the DEC and the irregular proceedings of Town of Sterling government in this matter;
- in 18.d the DEC misrepresents the radical alteration that will result in the radical alteration of the use and enjoyment of the officially-recognized 200-year old Hamlet of North Victory.

Storm Water Control Plan

- comments have been integrated into the sections above by topic and interface with other documents (e.g. Full Environmental Assessment Form, etc.).

Mined Use Plan

- many of the comments have been integrated into the sections above, also by topic interface with other documents, and frequently referred to / included in “the moving papers.”
- “Location” and “Adjacent Land Use Features”: the applicant conceals the location of the proposed mine adjacent to a two-hundred year old hamlet by giving its location as thirteen miles away from Fulton, New York, not even identifying it as in the Town of Sterling, and indicating its boundary on the west by Sanford Road and not even mentioning the Town of North Victory, the character of whose neighborhood would be radically altered, if not destroyed, by the proposed mining operation – indeed the applicant’s included map clearly marks the Hamlet with its name “North Victory.”
- “Existing Condition of Land” is declared by the applicant to be exempt from DEC regulations simply because of the alleged (not proven) low volume of “take” – disregarding the fact that the current mine appears to be deeper than 20 feet at its lowest/highest point and located far less than 500 feet from multiple residences;
- “Mineral and Mining Method,” again states no crushing is proposed, even though in other moving papers and in the DEC conditional Negative Declaration the DEC grants permission for crushing even after having performed no air quality studies whatsoever;
- “Air Quality” discussion is limited to only the mitigation of dust with no discussion of diesel odors, etc. and the dust is referred to as small quantities with no estimates communicated;
- “Water Quality”: conclusory statements of no impact on neighboring wells, the Sterling Creek, etc. are presented with no indication of the amounts of water expected to be used in the mining operations;

- “Visual” and “Noise” discussion refers to only the activities within the footprint and calculates distances in order to minimize the fact that the nearest residence is 175 feet from the proposed access road in the moving papers (see related discussions above); the applicant proposes mining activities Monday through Saturday, even though Town of Sterling LUR zoning ordinances forbid anything but residential deliveries on Saturdays;
- “Traffic” in the revised MLU document (digital version dated 5/2/15) reveals the Pople Road route and downplays any of the issues which the Cayuga County Planning Committee and the NYS DOT ultimately easily identified;
- “Wildlife”: with no submissions of any NWF experts on endangered species or plants, the applicant provides conclusory affirmations with no third-party documented evidence;
- “Cultural Resources”: the applicant states that information with respect to the entire site has been submitted to the OPRHP whereas Ms. Nikki Waters of Alliance Archaeological Services confirmed on 6/5/15 that only Phases I and II of the four planned phases has undergone official analysis;
- “Re-Vegetation”: although the applicant indicates that Cornell Cooperative Extension will be involved, his presented list of seeds to be used, fertilizers, etc. is unsupported by any document indicating consultation with that organization;
- The appendices show that the noise testing – without the apparently planned crusher use which was authorized by the DEC with air quality testing – was conducted without the noise of the crusher and screener and vehicles waiting for transport, etc.; it is therefore clear that the data have been “cooked,” and even so will border on or at times exceed the requisite 55 dB limits; the discussion of vegetation as a screen does not provide information as to the possible seasonal nature of such vegetative screening; further, the applicant appears to believe that what may or may not have been sporadic mining operations on that land justify the imposition of higher levels on the surrounding community, relying on the mining face alone to shield from excavator noise with no consideration of creating a barrier to shield processing noise which may or may not take place behind the face of the excavation.

DEC SEQR Negative Declaration

- see all of the above comment sections which include multiple references to statements made in the Negative Declaration, inter alia, the Negative Declaration contains statement which contradict and/or supplement the statements made by the applicant in the moving papers and/or by the applicant and/or by the DEC on official application forms, etc.
- the Negative Declaration is noteworthy for its failure to acknowledge the location of the zoned Hamlet of North Victory and its status as a 200-year residential community across the road from the Sanford Road location and for its failure to note that, inter alia, the traffic from the mine would violate the Town of Sterling LUR for hamlets and that other zoning regulation violations that the mine would perpetrate have not yet been addressed by the Town of Sterling;
- the DEC’s own map dated 2/24/2015 (zoomed out to 500x) contradicts its statement that there are no known wetlands in the LOM, and the failure to have the applicant acquire a true and accurate professional delineation of the wetland or the Town LUR-required topographical study does not justify the conclusory statements concerning the Sterling Creek and its national wetland in the document;

- the Negative Declaration states that there is no pumping of water planned, yet the Mined Land Use Plan clearly indicates that water will be taken from an onsite well;
- the Negative Declaration states that no chemicals will be stored onsite despite the fact that the Mined Land Use Plan clearly states that a facility will be maintained onsite for petroleum, albeit below the gallon limits required for a formal permit; the lack of need for a permit does not erase the fact of the presence of the hazardous materials and the risks attendant to their use above ground water, a national wetland and a principal town aquifer;
- the DEC's declaration that traffic from the mining operations would not have a significant impact on local roads was made with the opinion of only the Town of Sterling Highway Supervisor and is contradicted by the concerns expressed on May 29, 2015 by the NYS DOT as well as the Cayuga County Planning Committee which voted to recommend to the Town of Sterling to reject the application based in part on expected negative impacts on inter-municipal local roads; the online NYS DOT data relied upon by the DEC are four years out of date and the DOT has written to the DEC to recommend current traffic gap and accident analyses be conducted as well as to indicate that even the current condition of the state roads would be negatively impacted, requiring the construction of extra wide shoulders;
- the DEC's "worst case scenario," as analyzed in above sections of this document, was not the actual worst case scenario authorized by its Negative Declaration as it omitted the concomitant use of a crusher; further, the DEC permitted the applicant to "cook" the data by designing an alternate scenario – by which it would in no way be bound in its actual subsequent operations – to lower the dB values observed;
- in discussing dust, the DEC acknowledges that the well onsite will be used to fill trucks and the reader is left to wonder how the truck will be filled inasmuch as an earlier section of the Negative Declaration affirms that there will be no pumping of water onsite; further, the Negative Declaration only speaks of dust from processing operations without addressing whether excavation operations also produce significant dust; in fact no estimate of dust impact is provided for either type of operations;
- the air section of the Negative Declaration only addresses the regulation of machines and does not address what the Full Environmental Assessment Form includes: the impact of odors on air quality;
- despite the fact that DEC visits to the site were not conducted during the past owners' conduct of mining, the Negative Declaration's assertions that the site's vegetation – and setbacks well below the 500 foot limit – handled noise issues in the past is not supported by any data or studies and is contradicted by informal testimony of neighborhood and area residents (up to a distance of one and one-half miles) solicited by this commenter;
- the DEC refers to the setting of the mine as in "a rural and agricultural setting with low residential density," discounting the zoned hamlet community adjacent to the mine and the disturbances which such a major mining operation will impose upon that community;
- without contacting the National Fish and Wildlife Service or the Army Corps of Engineers for their evaluation of wetland boundaries and the potential presence of endangered species, plant or animal, the DEC makes conclusory statements about the lack of negative impact of the proposed operation; however, this is to be remedied in the coming days and weeks by the participation of both of those Federal agencies; note that

the Army Corps is issuing a warning letter to the applicant concerning the national wetland;

- the DEC opines in the Negative Declaration, a document which has suppressed the fact of the zoned hamlet adjacent to the proposed mine, that there would be no significant other land use impacts from such an operation; the DEC needs to retract that statement in its final declaration as other land use impacts – especially those in the Town of Sterling LUR which are violated by this application – are not within its jurisdiction and amount to improper advocacy for and cheerleading of the proposal to the Town; again such conclusory statements are contrary to the facts of the hamlet location which the DEC and the applicant have intentionally suppressed from the application, the moving papers, and the Negative Declaration;
- the Negative Declaration falsely states that the surrounding lands to the mine area are all zoned agricultural/residential – this is manifestly not the case, as can be seen by consultation of the Town of Sterling LUR documents at the very link provided by the DEC.

Concluding remarks

- the DEC's Negative Declaration is pre-mature for all of the above-stated reasons; the application needs to be revisited and all misrepresentations and counter-factual statements withdrawn; further, the Army Corps and the FWS need to be formally consulted, the Town of Sterling's mandated topographical study conducted, the DOT's requirements for study implemented, all errors in the application corrected to reflect accurately the zoning laws, etc., etc. before the final determination should be made.

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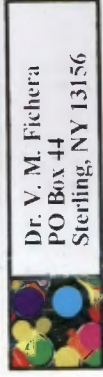
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